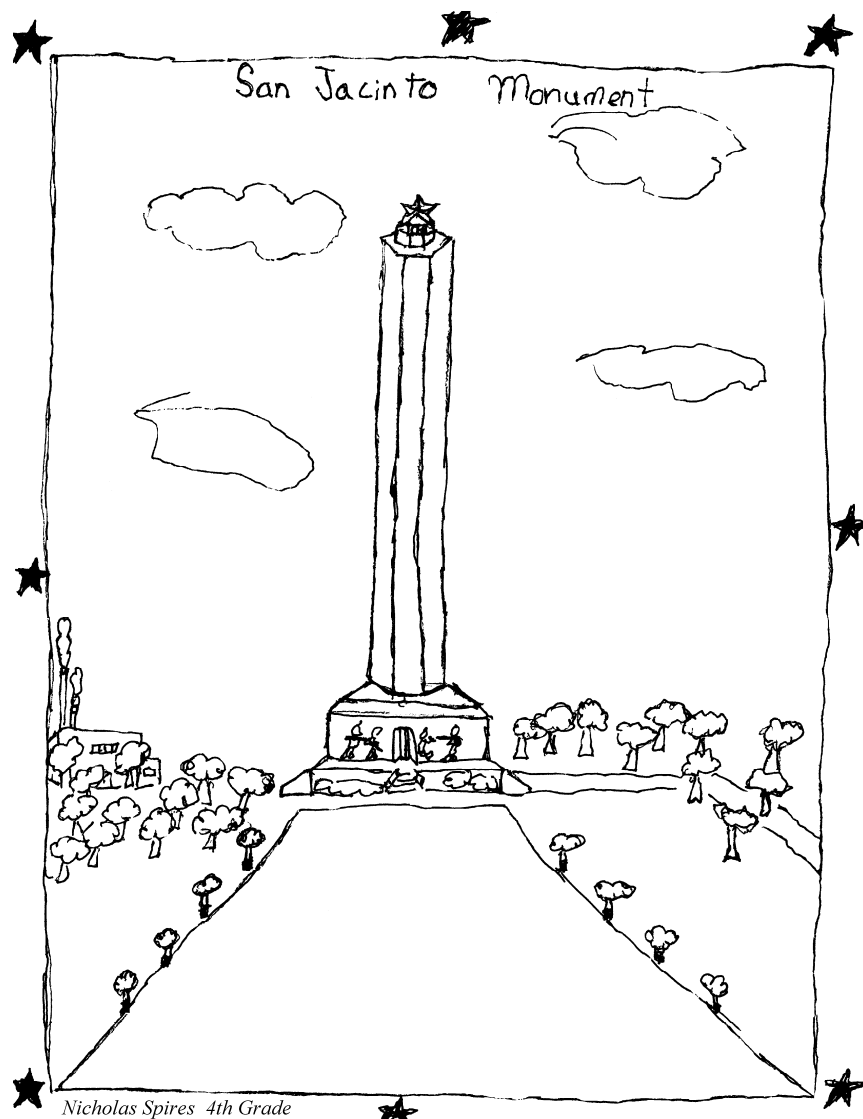

TEXAS REGISTER

Volume 34 Number 15

April 10, 2009

Pages 2313 - 2420



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

Texas Register, (ISSN 0362-4781, USPS 120-090), is published weekly (52 times per year) for \$211.00 (\$311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

Material in the ***Texas Register*** is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the ***Texas Register*** director, provided no such republication shall bear the legend ***Texas Register*** or "Official" without the written permission of the director.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register***, 136 Carlin Rd., Conklin, N.Y. 13748-1531.



a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

<http://www.sos.state.tx.us>
register@sos.state.tx.us

Secretary of State –
Hope Andrade

Director –
Dan Procter

Staff
Leti Benavides
Dana Blanton
Kris Hogan
Belinda Kirk
Roberta Knight
Jill S. Ledbetter
Juanita Ledesma
Preeti Marasini

IN THIS ISSUE

GOVERNOR

Appointments	2319
Proclamation 41-3177	2320
Proclamation 41-3178	2320
Proclamation 41-3179	2321

ATTORNEY GENERAL

Request for Opinions	2323
Opinions	2323

PROPOSED RULES

OFFICE OF THE GOVERNOR

CRIMINAL JUSTICE DIVISION

1 TAC §§3.1, 3.3, 3.5, 3.7, 3.9, 3.11, 3.21, 3.25	2326
1 TAC §3.17, §3.19	2329
1 TAC §3.51	2329
1 TAC §3.53, §3.55	2329
1 TAC §3.71	2330
1 TAC §§3.73, 3.75, 3.77, 3.79, 3.81, 3.83, 3.87	2330
1 TAC §§3.2001, 3.2009, 3.2013, 3.2021, 3.2023, 3.2025	2331
1 TAC §§3.2501, 3.2505, 3.2507, 3.2509, 3.2513, 3.2517, 3.2519, 3.2521, 3.2523, 3.2525, 3.2527, 3.2529	2332
1 TAC §3.2601, §3.2603	2335
1 TAC §3.8110	2335
1 TAC §§3.8300, 3.8305, 3.8310, 3.8315, 3.8320	2336
1 TAC §3.9400, §3.9405	2336
1 TAC §§3.9017, 3.9019, 3.9021	2336

TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

ADMINISTRATION

10 TAC §300.13	2339
10 TAC §300.15	2342

GENERAL PROVISIONS

10 TAC §301.3	2347
---------------------	------

INSPECTIONS OF HOMES IN AREAS WITHOUT MUNICIPAL INSPECTIONS

10 TAC §307.7	2348
---------------------	------

TEXAS HISTORICAL COMMISSION

ADMINISTRATIVE DEPARTMENT

13 TAC §11.12	2350
---------------------	------

TEXAS BOARD OF PROFESSIONAL ENGINEERS

ORGANIZATION AND ADMINISTRATION

22 TAC §131.85	2351
----------------------	------

LICENSING

22 TAC §133.11	2352
22 TAC §133.23	2352
22 TAC §133.33	2353
22 TAC §133.43	2354

TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

RULES OF PROFESSIONAL CONDUCT

22 TAC §501.82	2355
22 TAC §501.86	2357
22 TAC §501.90	2357

CERTIFICATION BY RECIPROCITY

22 TAC §512.1	2359
---------------------	------

STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

22 TAC §741.41	2361
22 TAC §741.64	2361
22 TAC §741.81	2362
22 TAC §741.103	2363
22 TAC §741.112	2363
22 TAC §741.122	2363
22 TAC §741.161, §741.162	2364
22 TAC §741.163	2364
22 TAC §741.163	2364
22 TAC §§741.211 - 741.215	2365

DEPARTMENT OF STATE HEALTH SERVICES

EMERGENCY MEDICAL CARE

25 TAC §157.133	2366
-----------------------	------

TEXAS DEPARTMENT OF INSURANCE

CORPORATE AND FINANCIAL REGULATION

28 TAC §7.18	2369
--------------------	------

ADOPTED RULES

OFFICE OF THE SECRETARY OF STATE

HEALTH SPAS

1 TAC §102.1	2375
1 TAC §§102.10 - 102.13, 102.15, 102.18	2376
1 TAC §102.20, §102.21	2376
1 TAC §§102.30, 102.32, 102.35, 102.45	2376
1 TAC §102.50	2376

STATE OFFICE OF ADMINISTRATIVE HEARINGS2397
RULES OF PROCEDURE	
1 TAC §155.1.....	2376
TEXAS LOTTERY COMMISSION	
GENERAL ADMINISTRATION	
16 TAC §403.501.....	2377
TEXAS BOARD OF CHIROPRACTIC EXAMINERS	
PROFESSIONAL CONDUCT	
22 TAC §80.5.....	2377
TEXAS BOARD OF NURSING	
NURSE LICENSURE COMPACT	
22 TAC §220.2, §220.3.....	2378
TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY	
RULES OF PROFESSIONAL CONDUCT	
22 TAC §501.71.....	2379
UNAUTHORIZED PRACTICE OF PUBLIC ACCOUNTANCY	
22 TAC §518.3.....	2379
PEER REVIEW	
22 TAC §527.2.....	2379
22 TAC §527.3.....	2380
22 TAC §527.4.....	2381
22 TAC §527.5.....	2381
22 TAC §527.6.....	2382
22 TAC §527.7.....	2383
22 TAC §527.8.....	2384
22 TAC §527.11.....	2384
TEXAS WATER DEVELOPMENT BOARD	
FINANCIAL ASSISTANCE PROGRAMS	
31 TAC §363.1006, §363.1007.....	2388
31 TAC §363.1206 - 363.1208.....	2389
DRINKING WATER STATE REVOLVING FUND	
31 TAC §§371.200 - 371.208.....	2389
CLEAN WATER STATE REVOLVING FUND	
31 TAC §375.2.....	2394
31 TAC §§375.400 - 375.408.....	2394
COMPTROLLER OF PUBLIC ACCOUNTS	
PROPERTY TAX ADMINISTRATION	
34 TAC §9.2005.....	2395
TABLES AND GRAPHICS	
IN ADDITION	
Alamo Regional Mobility Authority	
Request for Qualifications, Design/Build Comprehensive Develop- ment Agreement.....	2403
Office of the Attorney General	
Texas Water Code and Texas Health and Safety Code Settlement No- tice.....	2403
Brazos Valley Council of Governments	
ORCA Meeting Press Release.....	2403
Capital Area Rural Transportation System	
Schedule Change.....	2404
Coastal Coordination Council	
Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Pro- gram.....	2404
Office of Consumer Credit Commissioner	
Notice of Rate Ceilings.....	2405
Texas Commission on Environmental Quality	
Agreed Orders.....	2406
Notice of District Petition.....	2409
Notice of Minor Amendment Radioactive Material License.....	2409
Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit.....	2410
Notice of Water Quality Applications.....	2411
Proposal for Decision.....	2413
Texas Ethics Commission	
List of Late Filers.....	2413
Office of the Governor	
Notice of Application and Priorities for the Recovery Act: Edward Byrne Memorial Justice Assistance Grant Program Federal Applica- tion.....	2413
Texas Health and Human Services Commission	
Notice of Award of a Major Consulting Contract.....	2413
Public Notice.....	2414
Texas Department of Housing and Community Affairs	
Notice of Public Hearing for the American Recovery and Reinvestment Act of 2009 for the Weatherization Assistance Program Plan.....	2414
Texas Department of Insurance	
Company Licensing.....	2414
Texas Department of Licensing and Regulation	
Vacancy on Advisory Board on Cosmetology.....	2415

Vacancy on Water Well Drillers Advisory Council2415

North Central Texas Council of Governments

Public Notice Announcement - American Recovery and Reinvestment
Act Clean Vehicle and Infrastructure Funding Opportunities.....2415

Public Utility Commission of Texas

Announcement of Application for State-Issued Certificate of Franchise
Authority2416

Notice of Application for Review of Amended Nuclear Decommission-
ing Trust Agreement2416

Texas Department of Savings and Mortgage Lending

Notice of Application for Change of Control of a State Savings
Bank2416

South East Texas Regional Planning Commission

Request for Qualifications.....2416

Request for Qualifications.....2417

Texas Department of Transportation

Request for Proposals - Outside Counsel.....2417

Request for Proposal - Private Consultant Services2418

Texas State University-San Marcos

Consultant Contract Award.....2418

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
<http://www.state.tx.us/>

...

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for March 27, 2009

Appointed to the rank of Brigadier General in Headquarters, Texas State Guard, Austin, Texas, pursuant to Government Code 431.055, with all rights, privileges and emoluments appertaining to this office, Colonel Luis G. Fernandez of Austin.

Appointed to the rank of Brigadier General in Headquarters, Texas State Guard, Austin, Texas, pursuant to Government Code 431.055, with all rights, privileges and emoluments appertaining to this office, Colonel Robert J. Bodisch, Sr. of Austin.

Appointments for March 30, 2009

Appointed to the Texas Lottery Commission for a term to expire February 1, 2011, J. Winston Krause of Austin (replacing Mary Ann Williamson of Weatherford).

Appointed to the Texas Lottery Commission for a term to expire February 1, 2015, Mary Ann Williamson of Weatherford (replacing James Cox of Austin whose term expired).

Designating Mary Ann Williamson as presiding officer of the Texas Lottery Commission for a term at the pleasure of the Governor. Ms. Williamson is replacing James Cox of Austin as presiding officer.

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2013, G. Dave Scott, III of Richmond (replacing Zachary Brady of Lubbock who resigned).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2015, James F. Landtroop, Jr. of Plainview (replacing Wade Gear of Fort Worth whose term expired).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2015, Nancy W. Porter of Sugar Land (Ms. Porter is being reappointed).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2015, John D. Steinmetz of Lubbock (Mr. Steinmetz is being reappointed).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2015, Robert E. Tesch of Georgetown (replacing Scott Smith of Cedar Park whose term expired).

Appointed to the Real Estate Research Advisory Committee for a term to expire January 31, 2015, James Michael Boyd of Houston (Mr. Boyd is being reappointed).

Appointed to the Real Estate Research Advisory Committee for a term to expire January 31, 2015, Ronald Charles Wakefield of San Antonio (Mr. Wakefield is being reappointed).

Appointed to the Real Estate Research Advisory Committee for a term to expire January 31, 2015, Louis A. Cortes of San Antonio (replacing Catarina Cron of Houston whose term expired).

Appointed to the Texas School Safety Center Board for a term to expire February 1, 2011, Carl Montoya of Brownsville (reappointed).

Appointed to the Texas School Safety Center Board for a term to expire February 1, 2011, James Pendell of Fabens (reappointed).

Appointed to the Texas School Safety Center Board for a term to expire February 1, 2011, Ruben Reyes of Lubbock (reappointed).

Appointed to the Texas School Safety Center Board for a term to expire February 1, 2011, Severita Sanchez of Laredo (reappointed).

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2009, William F. "Dubb" Smith, III of Dripping Springs. Mr. Smith is replacing Kosse Maykus of Southlake whose term expired.

Appointed to the Judicial Compensation Commission for a term to expire February 1, 2015, William Strawn of Austin (Mr. Strawn is being reappointed).

Appointed to the Judicial Compensation Commission for a term to expire February 1, 2015, Paul Bane Phillippi of Cedar Creek (replacing Elizabeth Whitaker of Dallas whose term expired).

Appointed to the Texas Facilities Commission for a term to expire January 31, 2015, W. Derek Darby of Houston (Mr. Darby is being reappointed).

Appointed to the Texas Facilities Commission for a term to expire January 31, 2015, Virginia I. Hermosa of Austin (Ms. Hermosa is being reappointed).

Appointed to the Texas Facilities Commission for a term to expire January 31, 2015, Brant C. Ince of Dallas (replacing Victor Leal of Canyon whose term expired).

Appointed to the Texas Private Security Board for a term to expire January 31, 2015, John E. Chism of Irving (Mr. Chism is being reappointed).

Appointed to the Texas Private Security Board for a term to expire January 31, 2015, Patrick A. Patterson of Boerne (replacing Harold Warren of Austin whose term expired).

Appointed to the Upper Colorado River Authority Board of Directors for a term to expire February 1, 2015, Ronny Alexander of Paint Rock (replacing Fred Campbell of Paint Rock whose term expired).

Appointed to the Upper Colorado River Authority Board of Directors for a term to expire February 1, 2015, Hope Wilson Huffman of San Angelo (Ms. Huffman is being reappointed).

Appointed to the Upper Colorado River Authority Board of Directors for a term to expire February 1, 2015, William Ray Hood of Robert Lee (Mr. Hood is being reappointed).

Appointed to the Texas State Board of Social Worker Examiners for a term to expire February 1, 2015, Jody Anne Armstrong of Abilene (Ms. Armstrong is being reappointed).

Appointed to the Texas State Board of Social Worker Examiners for a term to expire February 1, 2015, Stewart Geise of Austin (replacing Matt Shaheen of Plano whose term expired).

Appointed to the Texas State Board of Social Worker Examiners for a term to expire February 1, 2015, Nary Spears of Houston (Mr. Spears is being reappointed).

Appointed to the Teacher Retirement System of Texas Board of Trustees for a term to expire August 31, 2013, Eric Craig McDonald of Lubbock. Mr. McDonald is replacing James H. Lee of Houston who resigned.

Appointed to the Aging and Disability Services Council for a term to expire February 1, 2015, Glyn S. Crane of Longview (replacing Terry Wilkinson of Midland whose term expired).

Appointed to the Aging and Disability Services Council for a term to expire February 1, 2015, Carolyn Harvey of Tyler (replacing Abigail Barrera of San Antonio whose term expired).

Appointed to the Aging and Disability Services Council for a term to expire February 1, 2015, Ann Schneider of Austin (replacing Nancy Lund of Texarkana whose term expired).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2011, Senator Kel Seliger of Amarillo (reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2011, Representative Jim McReynolds of Lufkin (reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2011, Lori Kennedy of Austin (reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2011, Lana Myers of Coppell (reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2011, Terry Gilmour of Midland (reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2011, Stephanie Pecora of Houston (reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2011, Anthony York of Pearland (reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2011, Michael Valdez of Conroe (reappointed).

Appointments for March 31, 2009

Appointed Judge of the 134th Judicial District Court, Dallas County for a term until the next General Election and until his successor shall be duly elected and qualified, James M. Stanton of Dallas. Mr. Stanton is replacing Judge Anne Ashby who resigned.

Appointed to the One Call Board for a term to expire August 31, 2011, Barbara J. Mathis of Lufkin (replacing Deborah Farris of Dallas whose term expired).

Appointed to the One Call Board for a term to expire August 31, 2011, Rodney J. Unruh of Spring Branch (replacing Steven F. Landon of Colleyville whose term expired).

Appointed to the Risk Management Board for a term to expire February 1, 2015, Ernest C. Garcia of Austin (reappointed).

Appointed to the Risk Management Board for a term to expire February 1, 2015, Kenneth N. Mitchell of El Paso (reappointed).

Rick Perry, Governor
TRD-200901270



Proclamation 41-3177

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Hurricane Ike inflicted serious damage in the coastal region of Texas on September 13, 2008; and

WHEREAS, 29 Texas counties, including Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, and Washington, were declared to be disaster areas as a result of Hurricane Ike; and

WHEREAS, on October 3, 2008, the President of the United States signed into law the Heartland Disaster Tax Relief Act of 2008 (the "Act"), which included changes to the federal tax law designed to provide economic relief to the Hurricane Ike disaster area; and

WHEREAS, the ACT allows for the issuance of certain tax exempt, qualified Hurricane Ike disaster area bonds to provide financing in the Hurricane Ike disaster areas; and

WHEREAS, the Governor of the State of Texas must designate such bonds for a private business use on the basis of providing assistance to areas in the order in which such assistance is most needed; and

WHEREAS, the maximum aggregate face amount of such bonds which may be designated shall not exceed the product of \$2,000 multiplied by the portion of the population which is in the Texas counties of Brazoria, Chambers, Galveston, Jefferson, and Orange.

BE IT RESOLVED, that I, Rick Perry, Governor of the State of Texas, hereby designate that projects located in the following 5 counties: Brazoria, Chambers, Galveston, Jefferson, and Orange, shall be the priorities for utilization of Hurricane Ike disaster area bonds; and

BE IF FURTHER RESOLVED, that individual projects shall be approved to utilize the Hurricane Ike disaster area bonds on a case by case basis to ensure that each project is an appropriate use of funds under the Heartland Disaster Tax Relief Act of 2008; and

BE IT FURTHER RESOLVED, that I reserve the right, as necessary to benefit the citizens of the affected areas, to redesignate the utilization priorities for the Hurricane Ike disaster area bonds.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas this the 17th day of March, 2009.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State
TRD-200901271



Proclamation 41-3178

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Section 704(a) of the Heartland Disaster Tax Relief Act of 2008 (the "Heartland Act") provides that Section 1400N(a) of the Internal Revenue Code of 1986, as amended (the "Code"), shall apply, as modified by the Heartland Act (collectively, the "Hurricane Ike Bond Act"), to any Hurricane Ike disaster area (as defined in Section 704(c) of the Heartland Act); and

WHEREAS, the Hurricane Ike Bond Act provides that a qualifying cost for a project involving a private business use requires that (i) either the person using the property suffered a loss in a trade or business attributable to Hurricane Ike or is a person designated by the Governor of the State of Texas (the "State") as a person carrying on a trade or business replacing a trade or business with respect to which another

person suffered such a loss, and (ii) for purposes of Section 704(a) of the Heartland Act, the bond is designated "on the basis of providing assistance to areas in the order in which such assistance is most needed" and such designation is made by the Governor; and

WHEREAS, the Jefferson County Industrial Development Corporation (the "Corporation") is authorized by the Development Corporation Act of 1979, Article 5190.6, Vernon's Annotated Texas Civil Statutes, as it has been or may be amended (the "Act"), to issue revenue bonds for the purpose of paying all or part of the cost of a "project," as defined (or to be defined) in the Act, and to sell or lease the project to others or to loan the proceeds of the bonds to others to finance all or part of the cost of the project; and

WHEREAS, Jefferson Refinery, L.L.C., a Texas limited liability company, or an affiliate thereof or a related person thereto (the "User"), desires to finance the Project (as hereinafter defined) with the proceeds of revenue bonds of the Corporation which will be loaned to the User by the Corporation and will be used and repaid by the User upon terms and conditions in accordance with the Act and Hurricane Ike Bond Act; and WHEREAS, the Corporation has represented to the State that it reasonably expects to authorize the issuance and sale of its tax-exempt obligations and its taxable obligations, to the extent permitted by law, to provide funds to defray all or part of the costs of acquiring, constructing, rehabilitating, developing, improving and equipping certain capital improvements, infrastructure, land and equipment and pay related financing costs with respect to storage and refinery facilities that constitute industrial or other facilities eligible under the Act and are located at or near 14404 Rollins Road, Winnie, in Jefferson County, Texas, (collectively, the "Project"), and of such facilities to be constructed or owned by or to be leased or sold to the User; and

WHEREAS, the User and the Corporation request that the revenue bonds to be issued by the Corporation for the Project be designated by the Governor as "qualified Hurricane Ike disaster area bonds" pursuant to the Code as amended by Hurricane Ike Bond Act; and

WHEREAS, based on facts represented by the User, the Corporation reasonably expects that (i) the maximum principal amount of any such tax-exempt Hurricane Ike disaster area revenue bonds issued to reimburse the User for the Costs of the Project will not exceed \$300,000,000; and (ii) the Project will contribute to the economic growth or stability of Jefferson County, Texas, is required or suitable for the development, retention or expansion of industrial facilities and will create or retain "Primary Jobs" (as currently defined in the Act); and

WHEREAS, Jefferson and Orange Counties have been designated by the Governor by a Proclamation, dated March 17, 2009, as priorities for utilization of Hurricane Ike disaster area bonds; and

WHEREAS, Jefferson and Orange Counties are highly reliant upon the petrochemical industry, and such counties face high unemployment; and

WHEREAS, there has been significant damage to the petrochemical industry in Texas as a result of Hurricane Ike; and

WHEREAS, one or more refineries will not be repaired and will remain closed with resulting loss of jobs; and

WHEREAS, other trades or businesses in the region have been damaged by Ike and many of such trades or businesses will not be repaired and will remain closed with a resulting loss of jobs; and

WHEREAS, the Project is a trade or business which will replace such refineries and/or other trades or businesses and will replace jobs lost.

NOW, THEREFORE, I, Rick Perry, Governor of the State of Texas, based in part upon the above findings hereby: (A) designate Jefferson

Refinery, L.L.C. as carrying on a trade or business replacing a trade or business which suffered a loss attributable to Hurricane Ike; (B) designate the Jefferson County Industrial Development Corporation Tax-Exempt Hurricane Ike Disaster Area Revenue Bonds (Jefferson Refinery, L.L.C. Project) Series 2009, in an aggregate principal amount of up to \$300,000,000 (the "Bonds"), for purposes of Section 704(a) of the Heartland Act, on the basis of providing assistance to areas in the order in which such assistance is most needed; and (C) approve the issuance of the Bonds. The amount of Bonds so designated does not exceed \$2,000 times the population of the counties of Brazoria, Chambers, Galveston, Jefferson, and Orange, in the State of Texas.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 17th day of March, 2009.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State

TRD-200901283



Proclamation 41-3179

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, did issue an Emergency Disaster Proclamation on January 30, 2009, certifying that an extreme fire hazard posed a threat of imminent disaster in specified counties in Texas, beginning January 16, 2009 and continuing.

WHEREAS, the extreme fire hazard continues to create a threat of disaster for the people in the State of Texas.

WHEREAS, the state of disaster includes the counties of Andrews, Archer, Armstrong, Atascosa, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Brazoria, Brewster, Briscoe, Brown, Burnet, Calhoun, Callahan, Cameron, Carson, Castro, Childress, Cochran, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Coryell, Cottle, Crane, Crockett, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, El Paso, Floyd, Foard, Freestone, Frio, Galveston, Garza, Gillespie, Goliad, Gonzales, Gray, Grayson, Guadalupe, Hale, Hall, Hansford, Harris, Hartley, Haskell, Hays, Hemphill, Hidalgo, Hill, Hockley, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kent, Kerr, Kimble, King, Kleberg, Knox, La Salle, Lamb, Lampasas, Lavaca, Lee, Liberty, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Martin, Mason, Matagorda, Maverick, Medina, Menard, Midland, Milam, Mills, Mitchell, Moore, Morris, Motley, Nolan, Nueces, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Pecos, Potter, Presidio, Rains, Randall, Reagan, Reeves, Refugio, Roberts, Rockwall, Runnels, San Jacinto, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Sherman, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val Verde, Victoria, Walker, Waller, Ward, Washington, Webb, Wharton, Wheeler, Wilbarger, Willacy, Williamson, Wilson, Winkler, Wise, Yoakum, Young, Zapata, and Zavala.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the Emergency Disaster Proclamation and direct that all necessary measures, both public and private, as authorized under Section 418.017 of the code, be implemented to meet that threat.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

The renewal of the Emergency Disaster Proclamation becomes effective on March 31, 2009, and shall remain in effect until April 29, 2009, unless renewed or terminated.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 30th day of March, 2009.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State

TRD-200901284



THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

Request for Opinions

RQ-0787-GA

Requestor:

The Honorable Richard R. Hicks, III
Caldwell County Criminal District Attorney
Caldwell County Courthouse
Post Office Box 869
Lockhart, Texas 78644

Re: Whether premiums paid for group health insurance by the Caldwell County Employee Benefit Trust are subject to insurance premium taxes under section 222.002 of the Insurance Code (RQ-0787-GA)

Briefs requested by April 27, 2009

RQ-0788-GA

Requestor:

The Honorable Edmund Kuempel
Chair, Committee on Licensing & Administrative Procedures
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Re: Whether an individual may simultaneously serve as a member of a school district board of trustees and as a principal of a disciplinary alternative program that serves several school districts (RQ-0788-GA)

Briefs requested by April 30, 2009

RQ-0789-GA

Requestor:

The Honorable Garnet F. Coleman
Chair, Committee on County Affairs
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Re: Whether a declaratory judgment establishing ownership in a company is sufficient to satisfy a request to the Texas Racing Commission for issuance of a new license (RQ-0789-GA)

Briefs requested by April 30, 2009

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200901278
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: April 1, 2009

◆ ◆ ◆

Opinions

Opinion No. GA-0701

The Honorable Pete Gallego
Chair, Committee on Criminal Jurisprudence
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Whether a justice of the peace is authorized to hear truancy cases involving students who are enrolled in a district that is located outside the boundaries of the justice's precinct (RQ-0748-GA)

S U M M A R Y

An offense for failure to attend school under section 25.094(a) of the Education Code may be prosecuted in a justice court of any precinct in the county in which the alleged truant resides or in which his school is located.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200901277
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: April 1, 2009

◆ ◆ ◆

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 3. CRIMINAL JUSTICE DIVISION

The Office of the Governor, Criminal Justice Division (CJD), proposes the amendment of Title 1, Part 1, Chapter 3, Subchapter A, §§3.1, 3.3, 3.5, 3.7, 3.9, 3.11, 3.21, and 3.25; Subchapter B, §§3.51, 3.73, 3.75, 3.77, 3.79, 3.81, 3.83, and 3.87; Subchapter D, §§3.2001, 3.2009, 3.2013, 3.2021, 3.2023, and 3.2025; Subchapter E, §§3.2501, 3.2505, 3.2507, 3.2509, 3.2513, 3.2517, 3.2519, 3.2521, 3.2523, 3.2525, 3.2527, and 3.2529; Subchapter F, §3.2601 and §3.2603; Subchapter G, §3.8110; and Subchapter J, §3.9400 and §3.9405.

The Office of the Governor, Criminal Justice Division (CJD), proposes the repeal of Title 1, Part 1, Chapter 3, Subchapter A, §3.17 and §3.19; Subchapter B, §§3.53, 3.55 and 3.71; and Subchapter G, Division 3, "Governor's S.T.O.P. Violence Against Women Planning Council" for §§3.8300, 3.8305, 3.8310, 3.8315, and 3.8320.

The proposed amendment to §3.1 removes the redundant language to clarify the intended purpose of this section.

The proposed amendment to §3.3 organizes the definitions and updates the outdated definitions relevant to CJD activities.

The proposed amendment to §3.5 removes the outdated and redundant language, as information is already listed in the *Texas Register* and CJD publications.

The proposed amendment to §3.7 and §3.9 removes the outdated and excessive wording no longer relevant to these sections intended audiences.

The proposed amendment to §3.11 updates the section with the Supplemental Award Acceptance information, and removes excessive language to clarify this section.

The proposed amendment to §3.21 updates the section since grant application and administration require dedicated internet capability.

The proposed amendment to §3.25 removes the excessive wording to clarify the meaning of this section.

The repeal of §3.17 is being proposed because the information is already provided per fund source on the Request for Application (RFA) and stated in the CJD Guide to Grants.

The repeal of §3.19 is being proposed because it is already referenced in §3.1 of this chapter, the RFA, and the CJD Guide to Grants.

The proposed amendment to §3.51 removes the redundant language, as information is already stated as a condition of Council of Government (COG) contracts with CJD.

The repeal of §3.53 is being proposed because the Governor's Juvenile Justice Advisory Council coordinates regularly with the Governor's Office, and as such, the priorities are frequently amended. The priorities are listed in the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Title II, Formula Grant Program's "Three-Year Plan", and in CJD's RFA each grant cycle.

The repeal of §3.55 is being proposed because the prohibitions do not apply to and varies across all fund sources. Specific prohibitions are listed per fund source on the RFA and are stated in CJD's Guide to Grants.

The repeal of §3.71 is being proposed because the information is redundant and outdated.

The proposed amendment to §3.73 updates the language to provide a succinct explanation of match policy. The information being removed from this section attempts to address every possible question as to match policies. Specific match policies are listed per fund source on the RFA and stated in the CJD Guide to Grants.

The proposed amendment to §3.75 removes excessive wording which obscures this section's intended purpose. The information being removed is already stated in a specific RFA for funding opportunities.

The proposed amendment to §3.77 removes excessive wording which obscures this section's intended purpose. Contracts addressed in this section fall under Texas contract laws.

The proposed amendment to §3.79 removes excessive language and clarifies records maintenance for training courses.

The proposed amendment to §3.81 removes excessive wording, and clarifies the requirement to provide CJD with an itemized list of equipment purchases upon application submission and grant adjustment.

The proposed amendment to §3.83 removes redundant language, as information is provided in §3.3 of this chapter.

The proposed amendment to §3.87 removes outdated information as to the guidelines for program income, and simplifies the requirements in this section.

The proposed amendment to §3.2001 updates outdated information to clarify this section.

The proposed amendment to §3.2009 removes outdated information, as grantees are no longer required to submit a Cooperative Working Agreement (CWA) to CJD.

The proposed amendment to §3.2013 removes excessive and redundant language to align with CJD policies regarding equipment and contractual and professional services.

The proposed amendment to §3.2021 updates outdated information, as new CJD guidelines relating to resolutions apply to only certain entities.

The proposed amendment to §3.2023 and §3.2025 corrects minor language in these sections.

The proposed amendment to §3.2501 removes excessive wording and outdated information, as this information is already provided in the CJD Guide to Grants and CJD policies.

The proposed amendment to §3.2505 removes excessive language and updates outdated information related to the audit report requirement.

The proposed amendment to §3.2507 updates outdated information regarding financial status reports, and clarifies when a grantee's funds lapse or liquidate.

The proposed amendment to §3.2509 clarifies the language related to equipment inventory reports.

The proposed amendment to §3.2513 removes excessive wording which obscures this section's intended purpose, as this information is already provided in the CJD Guide to Grants and CJD publications.

The proposed amendment to §3.2517 removes excessive wording, and clarifies when CJD will withhold grant payments.

The proposed amendment to §3.2519 removes outdated wording which obscures this section's intended purpose.

The proposed amendment to §3.2521 removes outdated wording to align with CJD's policies and procedures.

The proposed amendment to §3.2523 removes excessive language related to violations of laws.

The proposed amendment to §3.2525 removes excessive wording to clarify this section.

The proposed amendment to §3.2527 removes excessive and outdated language, as this information is already provided in the CJD Guide to Grants and CJD publications.

The proposed amendment to §3.2529 removes redundant language to clarify this section's intended purpose.

The proposed amendment to §3.2601 and §3.2603 removes outdated and excessive wording to align with CJD's monitoring policies.

The proposed amendment to §3.8110 updates the board member's term of office from two to four years.

The repeal of §§3.8300, 3.8305, 3.8310, 3.8315, and 3.8320 are being proposed because the council no longer exists. The council has fulfilled its stated mission per Governor Perry's Executive Order, RP7; therefore, the rules in this section are being repealed.

The proposed amendment to §3.9400 removes excessive wording related to definitions in this subchapter.

The proposed amendment to §3.9405 updates language to clarify this section.

Christopher Burnett, Executive Director of the Governor's Criminal Justice Division, has determined that for the first five-year

period the amendments and repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Burnett has also determined that for the first five-year period that the amendments and repeals are in effect the public benefit anticipated as a result of enforcing the sections will be more efficient processes and procedures and the current rules will be more easily understood. There will be no anticipated economic cost to persons or small businesses for complying with the proposed rules.

Comments on the proposed amendments may be submitted to Heather Morgan, Office of the Governor, Criminal Justice Division, P.O. Box 12428, Austin, Texas 78711, (512) 475-2594, hmorgan@governor.state.tx.us. Comments must be received no later than 14 days from the date of publication of the proposal in the *Texas Register*.

SUBCHAPTER A. GENERAL GRANT PROGRAM PROVISIONS

1 TAC §§3.1, 3.3, 3.5, 3.7, 3.9, 3.11, 3.21, 3.25

The amendment of these rules is proposed under §772.006(a)(10), Texas Government Code, which authorizes CJD to adopt rules and procedures as necessary.

The amended rules implement §772.006(a), Texas Government Code, which requires CJD to administer state and federal grant programs, and to assist the Governor in developing policies, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.1. *Applicability.*

Subchapters A through F of this chapter apply to all applications for funding and grants submitted to the Criminal Justice Division (CJD), Office of the Governor. A grantee must comply with the provisions of Subchapters A through F in effect on the date the grant is awarded by CJD, unless a subsequent effective date is specified by CJD in an original grant award or a grant adjustment. Grantees must comply with all applicable state and federal statutes, rules, regulations, and guidelines. In instances where both federal and state requirements apply to a grantee, the more restrictive requirement applies. [Subchapter A covers the general provisions for grant funding. Subchapter B addresses general eligibility and budget rules for grant funding. Subchapter D provides rules detailing the conditions CJD may place on grants. Subchapter E sets out the rules related to administering grants. Subchapter F specifies rules regarding program monitoring and audits. Subchapter G details the rules regarding CJD advisory boards. Subchapter H addresses Crime Stoppers program certification. Subchapter I adopts the Memorandum of Understanding between CJD and the Texas Department of Public Safety.]

§3.3. *Definitions.*

[The following words and terms, when used in this chapter, shall have the following meanings, unless otherwise indicated:]

(a) applicant: an agency or organization that has submitted a grant application or grant renewal documentation;

(b) approved budget categories: budget categories (including personnel, contractual and professional services, travel, equipment, construction, supplies and other direct operating expenses, and indirect costs) that contain a line item with a dollar amount greater than zero that is approved by CJD through a grant award or a budget adjustment;

(c) CJAC: Criminal Justice Advisory Committee, a component of a COG. A CJAC must have a multi-disciplinary representation of members from the region. This representation must contain members from the following groups: concerned citizens or parents, drug abuse prevention, education, juvenile justice, law enforcement, mental health, nonprofit organizations, prosecution/courts, and victim services. No single group may constitute more than one third of the CJAC;

(d) CJD: The Criminal Justice Division of the Office of the Governor or its designee;

(e) COG: a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Texas Local Government Code;

(f) condition of funding: a prerequisite placed on a grant because of a need for information, clarification, or submission of an outstanding requirement of the grant that may result in a hold being placed on the CJD-funded portion of a grant project;

(g) equipment:

(1) an article of non-expendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals the lesser of the capitalization level established by the grantee for financial statement purposes or \$1,000; or

(2) any of the following items with costs between \$500 and \$1,000: stereo systems, still and video cameras, facsimile machines, DVD players, VCRs and VCR/TV combinations, cellular and portable telephones, and computer systems.

(h) executive director: the executive director of CJD;

(i) grant funds: CJD-funded and matching funds portions of a grant project;

(j) grantee: an agency or organization that receives a grant award;

(k) liquidation date: the date specified in an original grant award of subsequent grant adjustment upon which a grantee must expend all outstanding liabilities;

(l) matching funds: the grantee's share of the project costs. Matching funds may either be cash or in-kind. Cash match includes actual cash spent by the grantee and must have a cost relationship to the award that is being matched. In-kind match includes the value of donated services. An applicant's use of matching funds must comply with the same statutes, rules, regulations, and guidelines applicable to the use of the CJD-funded portion of a grant project.

(m) OMB: The Office of Management and Budget;

(n) program income: gross income earned by the grantee during the funding period as a direct result of the award. "Direct result" is defined as a specific act or set of activities that are directly attributable to grant funds and that are directly related to the objectives of the project. Program income includes, but is not limited to, forfeitures, fees, cash contributions, donations, restitution, interest income, and royalties.

(o) RFA: Request for Applications, published in the *Texas Register* by CJD; and

(p) UGMS: the Uniform Grant Management Standards, promulgated by the Office of the Governor.

{(1) CJAC: Criminal Justice Advisory Committee, a component of a COG. A CJAC must have a multi-disciplinary representation of members from the region. This representation must contain members from the following groups: concerned citizens or parents,

drug abuse prevention, education, juvenile justice, law enforcement, mental health, nonprofit organizations, prosecution/courts, and victim services. No single group may constitute more than one third of the CJAC;}

{(2) CJD: The Criminal Justice Division of the Office of the Governor or its designee;}

{(3) COG: a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Texas Local Government Code;}

{(4) executive director: the executive director of CJD;}

{(5) grantee: an agency or organization that receives a grant award;}

{(6) grant funds: CJD-funded and matching funds portions of a grant project;}

{(7) OJP Financial Guide: the financial guide issued by the federal Office of Justice Programs, United States Department of Justice, applicable to the use of federal Department of Justice money in state grant projects;}

{(8) special condition: a condition placed on a grant because of a need for information, clarification, or submission of an outstanding requirement of the grant that may result in a hold being placed on the CJD-funded portion of a grant project;}

{(9) UGMS: the Uniform Grant Management Standards promulgated by the Governor's Office of Budget and Planning at 1-Texas Administrative Code (TAC) §§5.141 - 5.167;}

{(10) approved budget categories: budget categories (including personnel, contractual and professional services, travel, equipment, construction, supplies and other direct operating expenses, and indirect costs) that contain a line item with a dollar amount greater than zero that is approved by CJD through a grant award or a budget adjustment;}

{(11) applicant: an agency or organization that has submitted a grant application or grant renewal documentation;}

{(12) program income: gross income earned by the grantee during the funding period as a direct result of the award. "Direct result" is defined as a specific act or set of activities that are directly attributable to grant funds and that are directly related to the objectives of the project. Program income includes, but is not limited to, forfeitures, fees, cash contributions, donations, restitution, interest income, and royalties. Drug court fees collected pursuant to §469.004, Texas Health and Safety Code, are not considered program income;}

{(13) equipment;}

{(A) an article of non-expendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals the lesser of the capitalization level established by the grantee for financial statement purposes or \$1,000; or}

{(B) any of the following items with costs between \$500 and \$1,000: stereo systems, still and video cameras, facsimile machines, DVD players, VCRs and VCR/TV combinations, cellular and portable telephones, and computer systems.}

{(14) matching funds: the grantee's share of the project costs. Matching funds may either be cash or in-kind. Cash match includes actual cash spent by the grantee and must have a cost relationship to the award that is being matched. In-kind match includes the value of donated services. In-kind match is allowed only in the following funding sources: Title V Delinquency Prevention Fund, Victims of Crime Act Fund, and S.T.O.P. Violence Against Women Act Fund.}

§3.5. *[Grant] Submission Process.*

(a) When applying for a grant pursuant to an RFA published in the *Texas Register* by CJD, applicants must submit and certify their applications according to the requirements provided in the RFA.

~~[(a) When applying for a grant pursuant to a Request for Applications (RFA) published in the *Texas Register* by CJD, applicants must submit their applications according to the requirements provided in the RFA. The RFA will provide the following:]~~

- ~~[(1) the applicable funding source or sources;]~~
- ~~[(2) the types of grants available;]~~
- ~~[(3) information regarding deadlines for grant application submission;]~~
- ~~[(4) the maximum and minimum amounts of funding available for a grant, if applicable;]~~
- ~~[(5) the start dates for grants, and the length of grant periods;]~~
- ~~[(6) how applicants may access application kits;]~~
- ~~[(7) where applicants must submit applications;]~~
- ~~[(8) eligibility requirements;]~~
- ~~[(9) the selection process;]~~
- ~~[(10) any prohibitions on the use of grant funds; and]~~
- ~~[(11) contact information.]~~

(b) - (c) (No change.)

§3.7. *Selection Process.*

(a) All applications must be submitted to CJD and certified by the applicant's authorized official. [Applications submitted to CJD are reviewed for eligibility, reasonableness, availability of funding, and cost-effectiveness.] For applications submitted and certified pursuant to an RFA, the executive director may [will] select a review group, COG, or other designee to prioritize the applications and submit a priority listing to the executive director, who will render the final funding decision. [A review group may include staff members, experts in a relevant field, and members of an advisory board or council.]

(b) For applications certified by the applicant's authorized official [submitted to CJD pursuant to §3.5(b) of this chapter], the executive director will decide whether to fund the application based upon the following factors:

(1) - (3) (No change.)

(c) For applications prioritized by a COG, the CJAC must prioritize the applications and prepare the priority listing. The COG's governing body must approve the priority listing. [The COG then must submit the priority listing to CJD within the time periods established by CJD.] CJD will make [render] final [funding] decisions on these applications based upon the availability of funding, COG priorities, and eligibility[, and reasonableness]. Preference will be given to applicants who demonstrate an [cost] effective [programs focused on a comprehensive and effective] approach to services that compliment the Governor's strategies.

(d) During the review of an application, CJD [or its designee] may request that the applicant submit any additional information necessary to complete the grant review. [CJD or its designee may request the applicant to provide any outstanding forms and documents to clarify or justify any part of the application or to disclose other funding sources related to the project.] Such requests for information[, including the issuance of a preliminary review report,] do not serve as no-

tice that CJD intends to fund an application. [If CJD is not able to adequately resolve problems within an applicant's budget through the review process,] CJD may make the necessary corrections to an application [the budget] to bring it into compliance with [applicable] state or federal requirements. Any corrections to an applicant's budget will be reflected in the award documentation.

(e) CJD will inform applicants of [funding] decisions on their grant applications through either a Statement of Grant Award or a notification of denial. For applications prioritized by a COG that do not receive funding recommendations, the COG notification of the decision not to recommend funding serves as the applicant's notification of denial.

§3.9. *[Grant] Funding Decisions.*

(a) All [grant] funding decisions made by the executive director are final and are not subject to appeal [rest completely within the discretionary authority of CJD]. The receipt of an application [for grant funding] by CJD does not obligate CJD to fund the grant or to fund it at the amount requested.

(b) Neither the approval of a project nor any grant award shall [commit or] obligate CJD in any way to make any additional, supplemental, continuation, or other award [with respect to any approved project or portion thereof].

~~[(c) CJD makes no commitment that a grant, once funded, will receive priority consideration for subsequent funding.]~~

~~[(d) All funding decisions made by the executive director are final and are not subject to appeal.]~~

§3.11. *Grant and Supplemental Award Acceptance.*

The award documentation constitutes obligation of [the operative documents obligating and reserving] funds for use by the grantee in execution of the program or project covered by the award. Such obligation may be terminated without [further] cause if the grantee's authorized official fails to [properly] accept the grant award within 45 calendar days of the date when [upon which] CJD issues the Statement of Grant Award. CJD may extend this deadline on [upon] written request from the applicant. Funds [No funds] will not be disbursed [to the grantee] until acceptance of grant by the grantee [has properly accepted the grant].

§3.21. *Use of the Internet.*

~~[(a)] CJD requires an applicant or grantee to submit grant applications, progress reports, financial reports, and [CJD may transmit notices, forms, or] other information to CJD [an applicant or grantee] via the Internet or other electronic means.~~

~~[(b) CJD may require an applicant or grantee to submit grant applications, progress reports, financial reports, and other information to CJD via the Internet or other electronic means. Completion and submission of information via electronic means meets the relevant requirements contained within this chapter for submitting information in writing.]~~

§3.25. *Suspension of Rules.*

Except where prohibited by state or federal statute or rule[, regulation, or guideline,] the executive director may suspend any requirement in this chapter on [upon] a showing of good cause.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.
TRD-200901225

Kevin Green
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: May 10, 2009
For further information, please call: (512) 463-1919



1 TAC §3.17, §3.19

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Governor or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal of these rules is proposed under §772.006(a)(10), Texas Government Code, which authorizes CJD to adopt rules and procedures as necessary.

The repealed rules implement §772.006(a), Texas Government Code, which requires CJD to administer state and federal grant programs, and to assist the Governor in developing policies, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the repeal of these rules.

§3.17. *Grant Funding.*

§3.19. *Adoptions by Reference.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901226

Kevin Green

Assistant General Counsel

Office of the Governor

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 463-1919



SUBCHAPTER B. GENERAL GRANT PROGRAM POLICIES DIVISION 1. ELIGIBILITY REQUIREMENTS

1 TAC §3.51

The amendment of this rule is proposed under §772.006(a)(10), Texas Government Code, which authorizes CJD to adopt rules and procedures as necessary.

The amended rule implements §772.006(a), Texas Government Code, which requires CJD to administer state and federal grant programs, and to assist the Governor in developing policies, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

§3.51. *Community Plans.*

[(a)] Each community, consisting of a single county or a group of counties, must file with a COG a community plan that addresses [the community's] criminal justice priorities. COG's will develop standards for community planning. [A community plan should assess local trends

and data; identify problems, resources, and priorities; develop effective strategies; and set goals and objectives.]

[(b) A community planning committee must be formed to develop the plan. A committee must include a wide range of members from entities such as public agencies, nonprofit corporations, faith-based organizations, and concerned citizens.]

[(c) Applicants for grant funds must submit to a COG documentation that demonstrates participation in a local community planning process or describes how the application addresses a criminal justice priority as identified in the plan.]

[(d) COGs will develop regional standards by which they will accept community plans.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901227

Kevin Green

Assistant General Counsel

Office of the Governor

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 463-1919



1 TAC §3.53, §3.55

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Governor or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal of these rules is proposed under §772.006(a)(10), Texas Government Code, which authorizes CJD to adopt rules and procedures as necessary.

The repealed rules implement §772.006(a), Texas Government Code, which requires CJD to administer state and federal grant programs, and to assist the Governor in developing policies, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the repeal of these rules.

§3.53. *Juvenile Justice and Youth Projects.*

§3.55. *Prohibitions.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901228

Kevin Green

Assistant General Counsel

Office of the Governor

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 463-1919



DIVISION 2. GRANT BUDGET REQUIREMENTS

1 TAC §3.71

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the Office of the Governor or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal of this rule is proposed under §772.006(a)(10), Texas Government Code, which authorizes CJD to adopt rules and procedures as necessary.

The repealed rule implements §772.006(a), Texas Government Code, which requires CJD to administer state and federal grant programs, and to assist the Governor in developing policies, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the repeal of this rule.

§3.71. Grant Budgets.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901229

Kevin Green

Assistant General Counsel

Office of the Governor

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 463-1919



1 TAC §§3.73, 3.75, 3.77, 3.79, 3.81, 3.83, 3.87

The amendment of these rules is proposed under §772.006(a)(10), Texas Government Code, which authorizes CJD to adopt rules and procedures as necessary.

The amended rules implement §772.006(a), Texas Government Code, which requires CJD to administer state and federal grant programs, and to assist the Governor in developing policies, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.73. Matching Funds Policy.

If matching funds are required on a grant, an applicant must ensure that it possesses or can acquire the required matching funds. A contractor or participating entity may contribute toward the matching funds requirement, but the applicant bears the responsibility for satisfying the matching funds requirement.

[(a)] An applicant must ensure that it possesses or can acquire the required matching funds to satisfy the matching funds requirement. An applicant's use of matching funds must comply with the same statutes, rules, regulations, and guidelines applicable to the use of the CJD-funded portion of a grant project.]

[(b)] If matching funds are required on a grant, then the grantee must provide matching funds equal to or greater than the required minimum matching funds percentage of the total grant funds. Grantees will be held to and must report expenses for any matching funds included in the CJD-approved budget.]

[(e)] A contractor or participating entity may contribute toward the matching funds requirement, but the applicant bears the ultimate responsibility for satisfying the matching funds requirement.]

[(d)] Applicants may use funds received through program income to fulfill a matching funds requirement.]

[(e)] Subject to CJD review and approval, on-call services may be used to meet match requirements. Grantees must justify a demonstrated need for on-call services and have an on-call policy that is approved by their governing board. The maximum value for time for a volunteer who is on-call shall not exceed 50% of the value of a volunteer's time while providing direct services. If the governing board has established a lower rate, then the lower rate must be used. The on-call policy must be submitted to CJD for approval.]

[(f)] If an applicant applies for a grant under a funding source that allows in-kind contributions to satisfy part of the matching funds requirement, then the following rules apply:]

[(1)] In-kind contributions may consist of volunteer time, professional services, travel expenses, building space, non-expendable equipment, materials, and supplies contributed during the grant period to the applicant by a third party.]

[(2)] In-kind contributions may include depreciation and use fees for buildings or equipment acquired by the applicant before the start of the grant period and used in the grant project. However, the applicant may only count depreciation that will occur during the grant period as an in-kind contribution. Use fees qualify as an in-kind contribution only if supported by cost and depreciation records maintained by the applicant.]

[(3)] Applicants must maintain records of all in-kind contributions that include at least the following:]

[(A)] a full description of the item or service claimed;]

[(B)] the area, expressed in square feet, of any donated building space;]

[(C)] the name of the contributor;]

[(D)] the date of the contribution;]

[(E)] the fair market value of the contribution and how its value was determined; and]

[(F)] in the case of a discount given, the contributor's signature on an affidavit of worth stating that the donor gave the discount because of the project's purpose.]

§3.75. Personnel.

(a) CJD shall [will] determine the reasonableness of requested salaries and reserves the right to limit the CJD-financed portion of any salary. [In determining reasonableness, the following rules apply:]

[(1)] Salaries for grant-funded positions must comply with the grantee's or applicant's salary classification schedule for employees of the applicant agency. Salaries for persons assigned to the grant project from agencies other than the applicant must be reimbursed in accordance with the assigning agency's salary classification schedule.]

[(2)] If the applicant or assigning agency does not have a classification schedule, then the proposed salary must be commensurate with that paid for similar work in other activities of the applicant or assigning agency. In cases where such work is not found within the applicant or assigning agency, CJD will consider reasonableness based on that paid for similar work in the labor market in which the applicant or assigning agency competes for the kind of employees involved.]

{(3) CJD will not pay any portion of the salary of, or any other compensation for, an elected or appointed government official. Grants that fund juvenile courts or drug courts, regardless of the funding source, are exempt from this subsection.}

(b) CJD shall not pay any portion of the salary of, or any other compensation for, an elected or appointed government official. [Personnel compensated with grant funds must maintain on file personnel activity reports that reflect a distribution of actual time worked and activity performed; that are prepared at least monthly, and that are signed by the employee and a supervisory official having first hand knowledge of the work performed by the employee. Law enforcement and prosecution grant personnel whose primary function is investigating or enforcing laws or prosecuting alleged offenders are required to include the project's case or cause number (or other indicators of assignment) in the personnel activity report.]

(c) Compensation for grant funded employees must be comparable to that of non grant funded employees performing similar work duties. [Upon receipt of approval from CJD, a grantee may use grant funds to provide overtime pay in accordance with the grantee's policy, unless such use is otherwise prohibited by law.]

(d) (No change.)

§3.77. Professional and Contractual Services.

Grantees must establish a contract administration system to consistently ensure that contract deliverables are being provided as specified in the contracts.

{(a) Any contract or agreement entered into by a grantee that obligates grant funds must be in writing and consistent with Texas contract law.}

{(b) Grantees must maintain adequate documentation supporting budget items for a contractor's time, services, and rates of compensation.}

{(c) Grantees must establish a contract administration system to regularly and consistently ensure that contract deliverables are being provided as specified in the contracts. Grantees must regularly and consistently document the results of their contract monitoring reviews and must maintain the files and results of all contract monitoring reviews in accordance with the record retention requirements described in §3.2505 of this chapter.}

{(d) A grantee's failure to monitor its contracts may result in disallowed costs and/or disallowed match.}

{(e) In accordance with §3.2013 of this chapter, grantees must submit to CJD a CJD-prescribed Procurement Questionnaire when a procurement is expected to exceed \$100,000 or upon CJD request.}

§3.79. [Transportation,] Travel[-] and Training.

(a) Grant funds used for travel expenses must be limited to the grantee agency's established mileage, per diem, and lodging policies. [Federal regulations applicable to the relevant funding source may limit mileage reimbursement rates.] If a grantee does not have established mileage, per diem, and lodging policies, then the grantee must use state travel guidelines.

(b) Grantees must maintain records that properly document the completion of all grant-funded training courses. [Grantees using grant funds to develop and conduct training may not use grant funds to pay for transportation, lodging, per diem, or any related costs for participants. Crime Stoppers training projects and S.T.O.P. Violence Against Women Act Fund projects are exempt from this subsection.]

{(c) A person attending training courses paid for with grant funds must complete the course. Grantees must maintain records

that properly document the completion of all grant-funded training courses.}

§3.81. Equipment.

(a) Applicants must submit with their grant applications an itemized list of all proposed equipment purchases to CJD for approval. Grantees must request any additional equipment purchases through grant adjustments. [Grantees are not authorized to purchase any equipment until they have received approval to do so from CJD through an original grant award or a grant adjustment. Decisions regarding equipment purchases are made based on whether or not the grantee has demonstrated that the requested equipment is necessary, essential to the successful operation of the grant project, and reasonable in cost.]

(b) (No change.)

{(e) In accordance with §3.2013 of this chapter, grantees must submit to CJD a CJD-prescribed Procurement Questionnaire when a procurement is expected to exceed \$100,000 or upon CJD request.}

§3.83. Supplies and Direct Operating Expenses.

Supplies and direct operating expenses are costs directly related to the grantee's day-to-day operation of the grant project that are not included in any of the grantee's other approved budget categories[; as defined in §3.3(10) of this chapter, and that have an acquisition cost of less than \$1,000 per unit. Grantees must allocate costs on a prorated basis for shared usage].

§3.87. Program Income.

Earned program income must be reported to CJD. Program income may only be used, with prior approval from CJD, for allowable project costs as reflected in an approved budget. Grantees may not carry forward program income from one grant year to the next. Grantees must refund to CJD any program income remaining at the end of the grant period.

{(a) Rules governing the use of program income are included in the provisions adopted by reference in §3.19 of this chapter.}

{(b) Program income may only be used for allowable project costs as reflected in an approved budget.}

{(c) Grantees may not carry forward program income from one grant year to the next. Grantees must refund to CJD any program income remaining at the end of the grant period.}

{(d) As provided in §3.3(12) of this chapter, all funds, accrued interest, and property awarded to a grantee under a forfeiture action represent program income.}

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901230

Kevin Green

Assistant General Counsel

Office of the Governor

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 463-1919



SUBCHAPTER D. CONDITIONS OF GRANT FUNDING

1 TAC §§3.2001, 3.2009, 3.2013, 3.2021, 3.2023, 3.2025

The amendment of these rules is proposed under §772.006(a)(10), Texas Government Code, which authorizes CJD to adopt rules and procedures as necessary.

The amended rules implement §772.006(a), Texas Government Code, which requires CJD to administer state and federal grant programs, and to assist the Governor in developing policies, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.2001. [Special] Conditions of Funding.

When CJD determines that a grantee has failed to submit the necessary information or has failed to comply with any applicable statute, rule, regulation, guideline, or requirement, CJD may place a [special] condition of funding on the grant which may invoke a hold on funds. [The special condition allows CJD to place a grantee's funds on hold until the grantee has satisfied the requirements of the special condition.]

§3.2009. Cooperative Working Agreement.

(a) - (b) (No change.)

[(c) Each grantee must submit to CJD a list of each participating organization that has entered into a cooperative working agreement with the grantee and a written description of the purpose of each cooperative working agreement.]

§3.2013. Pre-Approval Requirements for Procurement.

(a) A grantee must submit a CJD-prescribed Procurement Questionnaire when any [When a] procurement is expected to exceed \$100,000 or upon CJD request[; a grantee must submit to CJD a CJD-prescribed Procurement Questionnaire]. CJD may also request all related procurement documentation, such as requests for proposals, invitations for bids, or independent cost estimates.

(b) Grantees may not divide purchases or contracts to avoid the requirements of this section. For purposes of determining compliance, CJD will consider groups of contracts with a single vendor or groups of purchases for the same or similar items as a single procurement. [When a procurement is expected to exceed \$100,000 or upon CJD request, and one of the following conditions exist, a grantee must submit to CJD all related procurement documentation, such as requests for proposals, invitations for bids, or independent cost estimates, along with a CJD-prescribed Procurement Questionnaire:]

[(1) the procurement is to be awarded without competition or only one bid or offer is received in response to a solicitation;]

[(2) the procurement specifies a "brand name" product; or]

[(3) the proposed contract is to be awarded to an entity other than the apparent low bidder under a sealed bid procurement.]

[(c) The information required in subsections (a) and (b) of this section must be submitted to CJD before grant funds are obligated or expended.]

[(d) Grantees may not divide purchases or contracts for the purposes of avoiding the requirements of this section. For purposes of determining compliance, CJD will consider groups of contracts with a single vendor or groups of purchases for the same or similar items as a single procurement.]

§3.2021. Resolutions.

Applications from local units of governments and other political subdivisions [Except for applications from state agencies; each application] must include a resolution [from the applicable governing body (such as

the city council, county commissioners' court, school board, or board of directors)] that contains the following:

(1) - (2) (No change.)

(3) a designation of the name or title of an authorized official who is given the power to apply for, accept, reject, alter, or terminate a grant (if this designation changes during the grant period, a new resolution must be submitted to CJD [by the governing body]); and

(4) (No change.)

§3.2023. Tax-Exempt and Nonprofit Information.

All nonprofit corporations [applying for grant funds] must submit with their application, information about the agency's fiscal capability, including information from the Internal Revenue Service granting the corporation tax-exempt status.

§3.2025. Civil Rights Liaison.

All applicants must certify that they have a designated civil rights liaison during the application process. The civil rights liaison will serve as the grantee's civil rights contact point and has [will bear] the responsibility for ensuring that the grantee meets all applicable civil rights requirements. The designee will act as the grantee's liaison in civil rights matters with CJD and with the federal Office of Justice Programs.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901231

Kevin Green

Assistant General Counsel

Office of the Governor

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 463-1919



SUBCHAPTER E. ADMINISTERING GRANTS

1 TAC §§3.2501, 3.2505, 3.2507, 3.2509, 3.2513, 3.2517, 3.2519, 3.2521, 3.2523, 3.2525, 3.2527, 3.2529

The amendment of these rules is proposed under §772.006(a)(10), Texas Government Code, which authorizes CJD to adopt rules and procedures as necessary.

The amended rules implement §772.006(a), Texas Government Code, which requires CJD to administer state and federal grant programs, and to assist the Governor in developing policies, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.2501. Grant Officials.

(a) Each grant must have a Project Director, Financial Officer, and Authorized Official. No person shall serve in more than one capacity. [three different grant officials:]

[(1) Project Director: The project director must be an employee of the applicant agency or be from the contractor organization that will be responsible for project operation or monitoring and who will serve as the point-of-contact regarding the project's day-to-day operations. For Crime Stoppers Programs, the project director can be an employee of a law enforcement agency who will act as the coordinator.

For Byrne Formula Grant Program projects, the project director shall not be the task force commander;]

{(2) Financial Officer. The financial officer must be the chief financial officer of the applicant agency. A county auditor, city treasurer, comptroller, or the treasurer of a nonprofit corporation's board may serve as the project's financial officer. The financial officer is responsible for establishing and maintaining financial records to accurately account for funds awarded to the grantee. These records shall include both federal funds and all matching funds of state, local, and private organizations, when applicable. The financial officer is also responsible for requesting funds and reporting grant activity to CJD on expenditure report forms provided to the financial officer; and]

{(3) Authorized Official. The authorized official must be authorized to apply for, accept, reject, alter, or terminate the grant for the applicant agency. The executive director of a state agency, county judge, mayor, city manager, chairman of a nonprofit board, director of a community supervision and corrections department, or other individual authorized by the governing body may serve as the authorized official. The authorized official must be designated by the governing body in its resolution pursuant to §3.2021 of this chapter.]

(b) Each grant official must have an e-mail address and access to the Internet. [No person shall serve in more than one capacity as a grant official.]

(c) The grantee shall notify CJD within 20 calendar days of any change in the designated project director, financial officer, or authorized official; any change in the mailing address, e-mail address, fax number, or telephone number of each grant official and any change in the grantee's physical address. [The grantee shall make every effort to ensure that each grant official has an e-mail address and access to the Internet.]

{(d) The grantee shall notify CJD within 20 calendar days of:

{(1) any change in the designated project director, financial officer, or authorized official and shall include a sample signature of the new project director, financial officer, or authorized official;}

{(2) any change in the mailing address, e-mail address, fax number, or telephone number of each grant official; and}

{(3) any change in the grantee's physical address.}

§3.2505. *Retention of Records.*

(a) Grantees must maintain all financial records, supporting documents, statistical records, and all other records pertinent to the award for at least three years following the closure of the most recent audit report or submission of the final financial status report [expenditure] if the audit report requirement has been waived. [Records retention is required for the purposes of federal or state examination and audit.] Grantees may retain records in an electronic format. All records are subject to audit or monitoring during the entire retention period.

(b) - (c) (No change.)

§3.2507. *Financial Status [Expenditure] Reports [and Reimbursement].*

(a) Each grantee must submit financial status [expenditure] reports to CJD. CJD will provide the appropriate forms and instructions for the reports along with deadlines for their submission. [Submission of an expenditure report may generate grant payment upon CJD approval. If the grantee fails to submit timely expenditure reports, grantees will not receive grant payments. The grantee must report program income in the expenditure report including program income earned by the grantee, a vendor or contractor.]

(b) A [After a grant has been accepted and if there are no outstanding special conditions or other deficiencies; a] grantee may submit financial status [expenditure] reports to generate reimbursement no more than once a month. [A grantee may submit an expenditure report to generate payment on a cost reimbursement basis.] Grantees may only request an advance payment during the first month of the grant period to cover the first month's expenses. [All expenditure reports must be submitted to CJD in accordance with the instructions provided.]

(c) Grantees must ensure that CJD receives their final financial status [expenditure] report no later than the liquidation date [90th calendar day after the end of the grant period] or funds will lapse and revert to the grantor agency. [If this date falls on a weekend or a state or federal holiday, then CJD will honor receipt on the next business day.] If grant funds are on hold for any reason, these funds will lapse on the liquidation date [at the end of the above-referenced period] and the grantee cannot recover them. CJD will not make payments to grantees that submit their final financial status [expenditure] report after the liquidation date [above-referenced deadline described by this subsection].

{(d) Crime Stoppers Assistance Fund projects are exempt from subsection (a) of this section and instead may request funds through submission of an expenditure report once each quarter on a cost-reimbursement basis only.}

§3.2509. *Equipment Inventory Reports.*

{(a)} CJD requires each grantee to maintain on file a current [an] inventory report of all equipment purchased with grant funds during the grant period. This report must reconcile [agree] with the approved grant budget and the final financial status [expenditure] report.

{(b) At least every two years, grantees must complete a physical inventory of all grantee property and the grantee must reconcile the results with the existing property records.}

§3.2513. *Grant Adjustments.*

(a) The project director, financial officer, or authorized official may submit requests for grant adjustments. [The authorized official must certify all grant adjustment requests.]

(b) [Budget Adjustments.] Adjustments consisting of increases or decreases in the amount of a grant or the reallocation of grant funds among or within approved budget categories[, as defined in §3.3(10) of this chapter, are considered budget adjustments, and] are allowable only with prior CJD approval. [The following rules apply to budget adjustments:]

{(1) Changes in the indirect costs category require prior CJD approval through a grant adjustment notice.}

{(2) CJD will not approve budget adjustment requests submitted after the end of the grant period.}

{(3) All budget adjustments must comply with all relevant rules in this chapter. The grantee must maintain accurate records that show all budget adjustments.}

(c) Programmatic changes, such as requests to revise the scope, target, or focus of the project, or alter project activities require prior approval from CJD. Requests to extend the grant period must be submitted to and received by CJD, no later than the last day of the grant period. [For supplemental grant awards, the authorized official must accept or reject any additional award within 45 calendar days of the date of the award and follow all rules in accordance with §3.11 of this chapter.]

{(d) Programmatic Changes. The following rules apply to programmatic changes:]

~~{(1) Requests to revise the scope, target, or focus of the project, or alter project activities require prior approval from CJD.}~~

~~{(2) A grantee may submit a request to extend the grant period. The request must be submitted to CJD and received no later than the last day of the grant period.}~~

§3.2517. Remedies for Noncompliance.

If a grantee fails to comply with any term or condition of a grant or any applicable statutes, rules, regulations, or guidelines, CJD may ~~[take one or more of the following actions]:~~

(1) ~~[temporarily] withhold all grant payments to a specific project or withhold all grant payments to all grant projects awarded to the grantee [the grant project] pending correction of the deficiency [by the grantee];~~

(2) ~~disallow all or part of the cost of the activity or action that is not in compliance [temporarily withhold all grant payments to all grant projects awarded to the grantee pending correction of the deficiency by the grantee];~~

(3) ~~withhold further grants from the program or grantee [disallow all or part of the cost of the activity or action that is not in compliance];~~

(4) ~~terminate the grant in whole or in part; or [impose administrative sanctions; other than fines; on the grantee];~~

(5) ~~exercise other legal remedies. [withhold further grants from the program or grantee];~~

~~{(6) terminate the grant in whole or in part; or}~~

~~{(7) exercise other remedies that may be legally available.}~~

§3.2519. Grant Reduction or Termination.

(a) (No change.)

(b) CJD may reduce or terminate any grant when:

(1) - (2) (No change.)

(3) ~~state or federal funds are no longer available to CJD [or are insufficient to fund a grant as grant awards are subject to the availability of state or federal funds];~~

(4) ~~conditions exist that make it unlikely that grant [or project] objectives will be accomplished; or~~

(5) ~~the grantee has acted in bad faith.~~

(c) In the event that a grant is reduced or terminated by CJD, CJD will notify the grantee in writing ~~[of its decision].~~

§3.2521. Payment of Outstanding Liabilities.

Grantees must expend all outstanding liabilities no later than ~~the liquidation date [90 calendar days after the end] of the grant period~~~~[, unless otherwise] specified in an original grant award or a subsequent grant adjustment.~~ All payments made after the completion of the grant period must relate to obligations incurred during the grant period.

§3.2523. Violations of Laws.

(a) A grantee must immediately notify CJD in writing of any legal violations~~[, including the misappropriation of funds; fraud; theft; embezzlement; forgery; or any other serious irregularities indicating noncompliance with grant requirements.~~ The grantee shall also notify the local prosecutor's office of any possible criminal violations].

(b) A grantee must immediately notify CJD in writing if a project or project personnel become involved in any civil or criminal litigation~~[, whether civil or criminal,]~~ and the grantee must immediately forward a copy of any demand notices, subpoenas, lawsuits, or indictments to CJD.

(c) - (d) (No change.)

§3.2525. Evaluating Project Effectiveness.

(a) Grantees ~~[CJD grantees]~~ must regularly evaluate ~~[the effectiveness of]~~ their projects. ~~[This includes a reassessment of project activities and services to determine whether they continue to be effective. Grantees must show that their activities and services effectively address and achieve the project's stated purpose.]~~ CJD will monitor the grantee [success] through ~~[required]~~ progress reports, on-site visits, and desk reviews. Grantees must maintain information related to project evaluations in the project's files, and that information must be available for review ~~[by CJD].~~

(b) Grantees are responsible for managing the day-to-day operations of grant and sub-grant [subgrant] supported activities, including those of their contractors and subcontractors. ~~[Grantee monitoring must cover each program, function and activity.]~~ Grantees must develop~~[, implement,]~~ and maintain a standardized monitoring program incorporating best practices ~~[to continuously assure grant and subgrant supported activities are monitored. The monitoring program will include, at a minimum, mechanisms by which grantees will ensure they are achieving performance goals and receiving contracted deliverables as specified in agreements and contracts].~~

§3.2527. Grantee Reports.

(a) Each grantee must submit reports regarding grant information, performance, and progress ~~[towards goals and objectives in accordance with the instructions provided by CJD and as outlined for each specific project area].~~ To remain eligible for funding, the grantee must be able to show the scope of services provided and the impact and quality of those services.

(b) CJD may place projects on financial hold for failure to submit complete and accurate progress reports. A grantee's history of delinquent or inaccurate reports may affect future funding decisions. ~~[The grantee must submit progress reports for those activities supported by grant funds.]~~

~~{(c) The grantee must use CJD-prescribed forms for progress reports. These forms will include instructions regarding the required frequency of reporting.}~~

~~{(d) The project director must submit all progress reports.}~~

~~{(e) CJD may place projects on financial hold for failure to submit complete and accurate progress reports by the specified deadline. CJD is under no obligation to send reminder notices or make reminder telephone calls prior to placing funds on hold. A grantee's history of delinquent or inaccurate reports may affect future funding decisions.}~~

§3.2529. Grant Management.

(a) CJD has oversight responsibility for the grants it awards. CJD may review the grantee's management and administration of grant funds and records at any time ~~[and may also request records in accordance with the record retention requirements described in §3.2505 of this chapter].~~ Grantees must respond to all CJD inquiries or requests and must make all requested records available to CJD.

(b) The grantee is the entity legally and financially responsible for the grant. A grantee may not delegate its legal or financial responsibility~~[, and must ensure that the project operates efficiently, effectively and in accordance with all applicable statutes, rules, regulations, and guidelines that govern CJD grants].~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.
TRD-200901232
Kevin Green
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: May 10, 2009
For further information, please call: (512) 463-1919

◆ ◆ ◆

SUBCHAPTER F. PROGRAM MONITORING AND AUDITS

1 TAC §3.2601, §3.2603

The amendment of these rules is proposed under §772.006(a)(10), Texas Government Code, which authorizes CJD to adopt rules and procedures as necessary.

The amended rules implement §772.006(a), Texas Government Code, which requires CJD to administer state and federal grant programs, and to assist the Governor in developing policies, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.2601. *Monitoring.*

(a) CJD will monitor the activities of grantees as necessary to ensure that grant funds are used for authorized purposes ~~[in compliance with all applicable statutes, rules, regulations, guidelines, and the provisions of grant agreements.]~~ and that grantees achieve grant purposes.

(b) The monitoring program may consist of formal audits, monitoring reviews, and technical assistance. CJD may implement monitoring through on-site review at the grantee ~~or sub-grantee [and/or subgrantee]~~ location or through a desk review. ~~[In addition,]~~ CJD may request grantees to submit ~~[relevant]~~ information to CJD ~~[, pursuant to §3.2529 of this chapter,]~~ to support any monitoring review.

(c) Grantees must make available to CJD ~~[or its agents]~~ all ~~[requested]~~ records relevant to a monitoring review. ~~[CJD may make unannounced monitoring visits at any time.]~~ Failure to provide adequate documentation ~~[upon request]~~ may result in disallowed costs or other remedies for noncompliance ~~[as detailed under §3.2517 of this chapter].~~

(d) (No change.)

(e) The grantee shall respond to the preliminary report and the deficiencies or recommendations, and submit a corrective action plan to CJD within a time ~~[time frame]~~ specified by CJD.

(f) (No change.)

(g) If the grantee believes corrective action is not required for a ~~[noted]~~ deficiency or recommendation, the response shall include an explanation and specific reasons. CJD will determine whether the response is adequate to resolve the deficiency or recommendation.

(h) ~~[CJD's approval of the corrective action plan is required before the grantee implements the corrective action plan.]~~ The grantee's response and the approved corrective action plan shall become part of the final report.

(i) The grantee shall resolve all identified ~~[issues,]~~ findings ~~[, or actions identified by CJD]~~ within the time ~~[time frame]~~ specified by CJD.

§3.2603. *Audits Not Performed by CJD.*

(a) - (b) (No change.)

(c) All other audits performed by auditors independent of CJD must be maintained at the grantee's administrative offices ~~[pursuant to §3.2505 of this chapter]~~ and be made available upon request by CJD. Grantees must notify CJD of any audit results that may adversely impact grant funds.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901234

Kevin Green
Assistant General Counsel
Office of the Governor

Earliest possible date of adoption: May 10, 2009
For further information, please call: (512) 463-1919

◆ ◆ ◆

SUBCHAPTER G. CRIMINAL JUSTICE DIVISION ADVISORY BOARDS DIVISION 1. CRIME STOPPERS ADVISORY COUNCIL

1 TAC §3.8110

The amendment of this rule is proposed under §772.006(a)(10), Texas Government Code, which authorizes CJD to adopt rules and procedures as necessary.

The amended rule implements §772.006(a), Texas Government Code, which requires CJD to administer state and federal grant programs, and to assist the Governor in developing policies, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

§3.8110. *Composition.*

The council must be composed of five members appointed by the governor with the advice and consent of the Texas Senate. At least three members must be persons who have participated in a local Crime Stoppers program. The term of office of each member is four ~~[two]~~ years. At its first meeting after the beginning of each fiscal year the council shall elect from among its members a chairman and other officers that the council considers necessary.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901235

Kevin Green
Assistant General Counsel
Office of the Governor

Earliest possible date of adoption: May 10, 2009
For further information, please call: (512) 463-1919

◆ ◆ ◆

DIVISION 3. GOVERNOR'S S.T.O.P. VIOLENCE AGAINST WOMEN PLANNING COUNCIL

1 TAC §§3.8300, 3.8305, 3.8310, 3.8315, 3.8320

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Governor or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal of these rules is proposed under §772.006(a)(10), Texas Government Code, which authorizes CJD to adopt rules and procedures as necessary.

The repealed rules implement §772.006(a), Texas Government Code, which requires CJD to administer state and federal grant programs, and to assist the Governor in developing policies, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the repeal of these rules.

§3.8300. *Establishment.*

§3.8305. *General Powers.*

§3.8310. *Composition.*

§3.8315. *Meetings.*

§3.8320. *Compensation.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901238

Kevin Green

Assistant General Counsel

Office of the Governor

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 463-1919



SUBCHAPTER J. STATE PLANNING ASSISTANCE GRANTS

1 TAC §3.9400, §3.9405

The amendment of these rules is proposed under §772.006(a)(10), Texas Government Code, which authorizes CJD to adopt rules and procedures as necessary.

The amended rules implement §772.006(a), Texas Government Code, which requires CJD to administer state and federal grant programs, and to assist the Governor in developing policies, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.9400. *Definitions.*

[In addition to the definitions listed in §3.3 of this chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise, when used in this subchapter.]

(a) ~~[(4)]~~ Automobile allowance: a monthly or other periodic stipend to defray the costs of operating a motor vehicle, which does not require mileage or other documentation.

(b) ~~[(2)]~~ Indirect costs: costs that are incurred for a common or joint purpose benefiting more than one cost objective, that are not readily assignable to the cost objectives specifically benefited without effort disproportionate to the results. CJD shall use the federal Office of Management and Budget Circulars A-87 and A-122, UGMS, and any rules relating to the determination of indirect costs adopted under Chapter 783, Government Code, in administering indirect cost recovery provisions of these rules.

(c) ~~[(3)]~~ Officially sanctioned conference or meeting: a conference or meeting conducted or attended as a part of a COG's official business.

§3.9405. *General Regulations.*

(a) The Office of the Governor will recognize one COG organized under Chapter 391, Local Government Code, in each state planning region or sub-region ~~[subregion]~~. Only the COG recognized by the Office of the Governor will be eligible for a state planning assistance grant.

(b) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901239

Kevin Green

Assistant General Counsel

Office of the Governor

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 463-1919



SUBCHAPTER H. CRIME STOPPERS PROGRAM CERTIFICATION

DIVISION 1. CRIME STOPPERS PROGRAM CERTIFICATION

1 TAC §§3.9017, 3.9019, 3.9021

The Office of the Governor, Criminal Justice Division (CJD), proposes the addition of Title 1, Part 1, Chapter 3, Subchapter H, Division 1, §§3.9017, 3.9019, and 3.9021. Pursuant to Chapter 414, Texas Government Code, the proposed rules were approved by the Governor's Crime Stoppers Advisory Council (Council) on February 19, 2009.

The proposed amendment to Subchapter H, Division 1, allows the Council to establish procedures for certified local Crime Stoppers programs to follow when a certified program wishes to merge with another certified program or a Crime Stoppers program that is not certified but is a 501(c)(3) corporation, and when a certified program wishes to add a geographical jurisdiction that does not currently have a local Crime Stoppers program.

The proposed addition will enable the Council to more effectively oversee multi-county programs which receive court funds under the provisions of Articles 42.12, 37.073 and 42.152, Code of Criminal Procedure. The Council needs to assure that certified

programs have followed all established procedures of the U.S. Internal Revenue Service and the Texas Secretary of State regarding non-profit 501(c)(3) corporations, that the programs are manageable, and that the programs are following the Standard Operating Procedures established by the Council for certified local programs. The amendment provides that any certified local Crime Stoppers program seeking to add counties or cities to its area of operation reapply for certification with the Council since the expanded program would no longer be the same program that the Council originally certified.

Christopher Burnett, Executive Director of the Governor's Criminal Justice Division (CJD), has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Burnett has also determined that for the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the sections will be more efficient processes and procedures and the current rules will be more easily understood. There will be no anticipated economic cost to persons or small businesses for complying with the proposed rules.

Comments on the proposed rules may be submitted to Heather Morgan, Office of the Governor, Criminal Justice Division, P.O. Box 12428, Austin, Texas 78711, (512) 475-2594, hmorgan@governor.state.tx.us. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The addition of these rules is proposed under §772.006(a)(10), Texas Government Code, which authorizes CJD to adopt rules and procedures as necessary.

The added rules implement §772.006(a), Texas Government Code, which requires CJD to administer state and federal grant programs, and to assist the Governor in developing policies, programs, and proposed legislation for improving the coordination, administration, and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the addition of these rules.

§3.9017. Mergers of Certified Programs.

If a certified Crime Stoppers program agrees with another certified Crime Stoppers program to merge and form a multi-county or multi-jurisdictional (i.e., county and city) program, the new program must apply for Continuing Certification since it is no longer the program that was originally certified by the Council, and the following procedures must be followed:

(1) The certified Crime Stoppers programs that want to merge must have contiguous borders.

(2) The participating programs must develop a cooperative agreement or memorandum of understanding (MOU) regarding the merger; each program's Board of Directors must vote to approve the cooperative agreement or MOU.

(3) The merging programs must choose a name for the new program unless both programs agree to operate under the name of one of the existing programs.

(4) The newly established program must file the following documents with the Director of the Texas Crime Stoppers Advisory Council requesting certification under a new name and with an expanded geographical territory:

(A) United States Internal Revenue Service (IRS) compliance documents for dissolution of a 501(c)(3) non-profit corporation and a 501(c)(3) letter authorizing the program to operate under the new name;

(B) Texas Secretary of State compliance documents for 501(c)(3) non-profit corporations;

(C) Application for Continuing Certification under the new name and with an expanded geographical territory;

(D) Copies of financial reviews of the restricted court fees accounts for all merging programs as required in §414.010(b), Texas Government Code; these financial reviews must be conducted by a Certified Public Accountant;

(E) Copy of Board of Directors membership list of the new program, to include contact information for Board members and the law enforcement coordinator;

(F) Copies of letters from Community Supervision and Corrections Departments (CSCD) detailing the amount of court fees paid to the merging programs during the previous two years, up to and including the date of the proposed merger, under the provisions of Articles 42.12, 37.073 and 42.152, Code of Criminal Procedure;

(G) Training certificates showing that at least one Board member, the law enforcement coordinator, and an executive director (if applicable) received training as authorized by the Crime Stoppers Advisory Council within the 12-month period preceding the merger;

(H) Copies of Probation Fee and Repayment Reports for the merging programs for the previous two calendar years as specified by §414.010(a), Texas Government Code;

(I) Copies of the Minutes of the Boards of Directors meetings of both certified Crime Stoppers programs in which the Boards voted to merge their programs; and

(J) A letter addressed to the Advisory Council stating that the new program will follow all rules applicable to the operations of Multi-County Programs as stated in the Standard Operating Procedures Manual of the Texas Crime Stoppers Advisory Council.

(5) If the Director of the Advisory Council determines that the new program meets all requirements paragraphs (1) - (4) of this section, the program will be presented to the Council for certification at the Council's next regularly scheduled meeting.

(6) Once the Advisory Council grants certification, the new program can merge the restricted bank accounts of both programs, as well as all other accounts held by the entities. The new program will also be eligible to apply to the relevant CSCDs to receive court fees under the provisions of Articles 42.12, 37.073, and 42.152, Code of Criminal Procedure.

(7) The new program is not eligible to establish an "Excess Funds Account" under the provisions of §414.010(d), Texas Government Code, until three years from the certification date.

(8) The certification is valid for a period of two years.

(9) All certified programs, regardless of the date on which any existing mergers occurred, must comply with these rules upon recertification.

§3.9019. Mergers of Non-certified Programs to Certified Programs.

(a) The certified Crime Stoppers program that wants to merge with a non-certified 501(c)(3) Crime Stoppers program must have contiguous borders.

(b) The participating programs must develop a cooperative agreement or memorandum of understanding (MOU) regarding the merger; each program's Board of Directors must vote to approve the cooperative agreement or MOU.

(c) The merging programs must choose a name for the new program unless both programs agree to operate under the name of one of the existing programs.

(d) The newly established program must file the following documents with the Director of the Texas Crime Stoppers Advisory Council requesting Certification under a new name and with an expanded geographical territory:

(1) United States Internal Revenue Service (IRS) compliance documents for dissolution of a 501(c)(3) non-profit corporation and a 501(c)(3) letter authorizing the program to operate under the new name;

(2) Texas Secretary of State compliance documents for 501(c)(3) non-profit corporations;

(3) Application for Continuing Certification under the new name and with an expanded geographical territory;

(4) Copies of financial reviews of the restricted court fees accounts for the certified Crime Stoppers program as required in §414.010(b), Texas Government Code; these financial reviews must be conducted by a Certified Public Accountant;

(5) Copies of financial reviews of all bank accounts held by the non-certified 501(c)(3) Crime Stoppers program; these financial reviews must be conducted by a Certified Public Accountant;

(6) If the financial review establishes that at any time the non-certified 501(c)(3) Crime Stoppers program was certified by the Crime Stoppers Advisory Council and received court fees under Articles 42.12, 37.073 and 42.152, Code of Criminal Procedure, and failed to return all court fees to the Office of the Comptroller, State of Texas, within 60 days following the loss of certification, as required by §414.010(c), Texas Government Code, a copy of the check for the outstanding court fees, made payable to the Office of the Comptroller, must be submitted with the application for certification;

(7) Copy of Board of Directors membership list of the new program, to include contact information for Board members and the law enforcement coordinator;

(8) Copies of letters from the Community Supervision and Corrections Departments (CSCD) detailing the amount of court fees paid to the certified Crime Stoppers program during the previous two years, up to and including the date of the proposed merger, under the provisions of Articles 42.12, 37.073 and 42.152, Code of Criminal Procedure;

(9) Training certificates showing that at least one Board member, the law enforcement coordinator, and an executive director (if applicable) received training as authorized by the Crime Stoppers Advisory Council within the 12-month period preceding the merger;

(10) Copies of Probation Fee and Repayment Reports for the certified Crime Stoppers program for the previous two calendar years as specified by §414.010(a), Texas Government Code;

(11) Copies of the Minutes of the Boards of Directors meetings of the certified Crime Stoppers program and the non-certified 501(c)(3) Crime Stoppers program in which the Boards voted to merge their programs; and

(12) A letter addressed to the Advisory Council stating that the new program will follow all rules applicable to the operations of

Multi-County Programs as stated in the Standard Operating Procedures Manual of the Texas Crime Stoppers Advisory Council.

(e) If the Director of the Advisory Council determines that the new program meets all requirements in subsections (a) - (d) of this section, the program will be presented to the Council for certification at the Council's next regularly scheduled meeting.

(f) Once the Advisory Council grants certification, the new program can merge the bank accounts of both programs. The new program also will be eligible to apply to the relevant CSCDs to receive court fees under the provisions of Articles 42.12, 37.073, and 42.152, Code of Criminal Procedure.

(g) The new program is not eligible to establish an "Excess Funds Account" under the provisions of §414.010(d), Texas Government Code, until three years from the certification date.

(h) The certification is valid for a period of two years.

(i) All certified programs, regardless of the date on which any existing mergers occurred, must comply with these rules upon recertification.

§3.9021. Addition of Geographical Jurisdictions to Certified Programs.

If a county or city that is not presently served by a certified Crime Stoppers program wants to join an existing certified Crime Stoppers program, the following procedures must be followed:

(1) The county or city must share contiguous borders with the certified Crime Stoppers program;

(2) A citizens' delegation from the county or city must meet with the Board of Directors of the certified Crime Stoppers program to develop an operational agreement or Memorandum of Understanding (MOU); the Board of Directors of the certified program must vote to accept the geographical entity making the request;

(3) The certified Crime Stoppers program and the geographical entity that is requesting to join the Crime Stoppers program must choose a new name for the program unless both parties agree to operate under the name of the existing program;

(4) The certified Crime Stoppers program must file the following documents with the Director of the Texas Crime Stoppers Advisory Council requesting certification under a new name (if applicable) and with an expanded geographical territory:

(A) United States Internal Revenue Service (IRS) letter for a 501(c)(3) corporation authorizing the program to operate under a new name, if applicable;

(B) Texas Secretary of State letter for a 501(c)(3) corporation authorizing the program to operate under a new name, if applicable;

(C) Application for Continuing Certification under the new name (if applicable) and with an expanded geographical territory;

(D) Copies of a financial review of all bank accounts for the certified Crime Stoppers program as required in §3.9000(d)(6)(A) of this chapter;

(E) Copy of Board of Directors membership list for the program, to include contact information for Board members and the law enforcement coordinator;

(F) Copies of letters from the Community Supervision and Corrections Departments (CSCD) detailing the amount of court fees paid to the certified program during the previous two years, under

the provisions of Articles 42.12, 37.073 and 42.152, Code of Criminal Procedure;

(G) Training certificates showing that at least one Board member, the law enforcement coordinator, and an executive director (if applicable) received training as authorized by the Crime Stoppers Advisory Council within the 12-month period preceding the new application for Continuing Certification;

(H) Copies of Probation Fee and Repayment Reports for the certified Crime Stoppers program for the previous two calendar years as specified by §414.010(a), Texas Government Code;

(I) Copy of the Minutes of the Board of Directors of the certified Crime Stoppers program in which the Board voted to add the new geographical entity to the territory served by the Crime Stoppers program; and

(J) A letter addressed to the Council stating that the program will follow all rules applicable to the operations of Multi-County Programs as stated in the Standard Operating Procedures Manual of the Texas Crime Stoppers Advisory Council.

(5) If the Director of the Council determines that the newly expanded program meets all requirements listed in paragraphs (1) - (4) of this section, the program will be presented to the Council for certification at the Council's next regularly scheduled meeting.

(6) Once the Council grants certification, the program will be eligible to apply to the CSCDs in the newly acquired geographical territory to receive court fees under the provisions of Articles 42.12, 37.073 and 42.152, Code of Criminal Procedure.

(7) The certification is valid for a period of two years.

(8) All certified programs, regardless of the date on which any existing mergers occurred, must comply with these rules upon recertification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901246

Kevin Green

Assistant General Counsel

Office of the Governor

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 463-1919



TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 300. ADMINISTRATION

10 TAC §300.13

The Texas Residential Construction Commission (commission) proposes new 10 TAC §300.13, relating to negotiated rulemaking, which is a process by which representatives of a commission and interested parties seek to reach consensus on the terms of a proposed rule and on the process by which it is negotiated. When conducted in accordance with Government Code Chapter 2008, negotiated rulemaking is conducted in specific steps that

allow the commission several opportunities to consider whether negotiated rulemaking is appropriate for the specific issue.

If the negotiated rulemaking process does not result in a rule upon which the committee reaches consensus, the commission may use the committee's documents, research, reports, and information to consider proposal of its own rule. Negotiated rulemaking does not delegate the commission's jurisdiction or rulemaking authority. The commission will not approve for publication a rule that is outside of its scope of jurisdictional authority or that violates law.

When a negotiated rulemaking committee reaches consensus, the commission must still evaluate the rulemaking. Then, the commission decides whether to publish the negotiated rulemaking for proposal, notice, and comment. In other words, the negotiated rulemaking precedes and is supplemental to all rulemaking requirements of the Administrative Procedure Act, Government Code Chapter 2001 Subchapter B.

Ms. Susan K. Durso, General Counsel for the commission, has determined that for each year of the first five-year period that the proposed new rule is in effect there will be no increase in expenditures or revenue for state government and no fiscal impact for state or local government as a result of enforcing or administering the new rule. The negotiated rulemaking process will be used only in circumstances where the criteria of Government Code §2008.052(d) indicate that negotiated rulemaking is likely to have favorable results.

Ms. Durso has also determined that for the first five years the proposed new rule is in effect the public will benefit from the proposed rule. When appropriate for developing rules, negotiated rulemaking improves relationships with regulatory stakeholders; increases public participation; and provides a forum in which rule provisions may be discussed and conflicts resolved before the rule is published in the *Texas Register* for public comment. Negotiated rulemaking brings together representatives of the agency and the various affected interests to develop a rule proposal in a cooperative effort. Therefore, the negotiated rulemaking process results in rules that meet statutory requirements and that are accepted by stakeholders, such as residential builders, homeowners, and the public.

Ms. Durso has also determined that there is no anticipated economic cost to small businesses or persons who are required to comply with the proposed new rule because the proposed new rule establishes the parameters for negotiated rulemaking, but does not require participation. A person interested in the subject matter of a negotiated rulemaking has the opportunity to participate in the rulemaking process and submit comments to the commission on the rules resulting from consensus of the negotiated rulemaking committee.

Ms. Durso has also determined that for each year of the first five-year period the proposed new rule is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Ms. Durso has also determined that for each year of the first five-year period the proposed new rule is in effect there will be no adverse economic effect on small businesses. Therefore, no regulatory flexibility analysis is necessary.

Written comments (12 copies) on the proposed new rule may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission by delivery to 311 East

14th Street, Austin, Texas 78701; or by fax to (512) 463-9507; or by mail to P.O. Box 13509, Austin, TX 78711-3509. Comments submitted by mail must be post marked by the deadline date. Comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "New rule 300.13 - Negotiated Rulemaking" in the subject line. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed rule in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the rule under consideration. Comments submitted electronically to a different email address or that do not have "New rule 300.13 - Negotiated Rulemaking" in the subject line may not be considered.

The new section is proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code; Government Code §2008.051, which provides authority to state agencies to implement rules and engage in negotiated rulemaking; and the Administrative Procedure Act, Texas Government Code, Chapter 2001.

No other statutes, articles, or codes are affected by the proposed new rule.

§300.13. Negotiated Rulemaking.

(a) Policy. It is the commission's policy to employ negotiated rulemaking procedures in accordance with Government Code Chapter 2008, when appropriate.

(b) Definitions. When used in this section, these words and terms shall have the following meanings, unless the context of the rule clearly indicates otherwise.

(1) Convener--an impartial third-party, commission employee, or other individual without interest in the outcome of the negotiated rulemaking process, who identifies the interests affected by the negotiated rulemaking; collects information about the interests, issues, and parties; objectively surveys the regulatory landscape for the contemplated rulemaking; and reports these findings to the commission. If qualified, the convener may also act as the facilitator.

(2) Convening step--the first step in the negotiated rulemaking process whereby the commission objectively assesses whether negotiated rulemaking is the appropriate process for addressing an issue.

(3) Negotiated rulemaking committee (committee)--committee whose members are appointed by the commission to create an appropriate balance between representatives of affected interests and may include members or staff representing the commission.

(4) Negotiated rulemaking committee facilitator (facilitator)--assists the negotiated rulemaking committee in reaching a consensus.

(5) Negotiated rulemaking committee recommendation (recommendation)--a rulemaking proposal upon which each member of the negotiated rulemaking committee concurs.

(c) Petition. A petition to initiate a negotiated rulemaking proceeding must meet all requirements under §300.12(a) of this title and must include:

(1) a statement specifying that the request is for a negotiated rulemaking;

(2) an explanation of how the proposed rule would implement the commission's mission within the jurisdiction of the commission;

(3) all available data or information showing a need for the proposed rule; and

(4) such other information that the commission or the staff of the commission may request.

(d) Initiation of negotiated rulemaking. The commission may consider whether to initiate the convening step of a negotiated rulemaking upon:

(1) the filing of a petition to initiate a negotiated rulemaking that meets the requirements of subsection (c) of this section;

(2) the filing of a petition to initiate a negotiated rulemaking proposed by the commission; or

(3) a determination by the commission that a negotiated rulemaking would be beneficial to the commission's consideration of a proposed rule.

(e) Convening step. When the commission determines that a negotiated rulemaking is an appropriate process for developing proposed rules, it may initiate a negotiated rulemaking process by appointing a convener.

(f) Appointment of convener. The commission may appoint a convener to assist the commission's identification of persons who are likely to be affected by the proposed rule, including persons who oppose the issuance of a rule. The convener will discuss with affected persons or their representatives:

(1) whether they are willing to participate in negotiated rulemaking;

(2) whether the agency should engage in negotiated rulemaking to develop the proposed rule;

(3) which issues a negotiated rulemaking committee should address; and

(4) whether there are other persons the convener needs to identify who may be affected by the proposed negotiated rulemaking.

(g) Convener's report. The convener will report to the commission:

(1) the number of identifiable interests that would be significantly affected by the proposed rule;

(2) the probability that those interests would be adequately represented in a negotiated rulemaking;

(3) the probable willingness and authority of the representatives of affected interests to negotiate in good faith;

(4) the probability that a negotiated rulemaking committee would reach a unanimous or a suitable general consensus on the proposed rule;

(5) the probability that negotiated rulemaking will not unreasonably delay notice and eventual adoption of the proposed rule;

(6) the adequacy of agency and citizen resources to participate in negotiated rulemaking;

(7) the probability that the negotiated rulemaking committee will provide a balanced representation between public and regulated interests;

(8) the willingness of the agency to accept the consensus of a negotiated rulemaking committee as the basis for the proposed rule; and

(9) whether the convener recommends negotiated rulemaking as a feasible method to develop the proposed rule.

(h) Commission decision to proceed. After considering the convener's report and recommendation, the commission will determine during an open meeting whether to proceed with negotiated rulemaking.

(i) Notice of the negotiated rulemaking. If the commission's decision is to proceed with negotiated rulemaking, the commission will publish notice of its intention in the *Texas Register*. The commission may also publish notice of its intention in other appropriate media. The notice will include:

(1) a statement that the agency intends to engage in a negotiated rulemaking;

(2) a description of the subject and scope of the rule to be developed;

(3) a description of the known issues to be considered in developing the rule;

(4) a list of the interests that are likely to be affected by the proposed rule;

(5) a list of the individuals the agency proposes to appoint to the negotiated rulemaking committee to represent the agency and affected interests;

(6) a request for comments on the proposal to engage in negotiated rulemaking and on the proposed membership of the negotiated rulemaking committee; and

(7) a description of the procedure, including any deadline, through which a person who will be significantly affected by the proposed rule may, before the agency establishes the negotiated rulemaking committee, apply to the agency for membership on the committee or nominate another to represent the person's interests on the committee.

(j) Appointment of committee. After the close of the notice and comment period described in subsection (i) of this section, the commission will use the public comment and the convener's report to deliberate and appoint members to the negotiated rulemaking committee who will:

(1) create the appropriate balance between representatives of affected interests; and

(2) represent the commission.

(k) Appointment of facilitator. At the time the commission appoints the members to the negotiated rulemaking committee, the commission will appoint a committee facilitator:

(1) who possess the qualifications required for an impartial third-party under Civil Practice and Remedies Code §154.052(a), including completion of a minimum of 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the commission;

(2) who has qualified immunity under Civil Practice and Remedies Code §154.055, if applicable;

(3) who is not the person designated to represent the agency on the negotiated rulemaking committee for substantive issues related to the rulemaking;

(4) who does not have a financial or other interest in the outcome of the rulemaking process that would interfere with the person's impartial and unbiased service as the facilitator;

(5) who serves at the will of the committee; and

(6) whose appointment by the commission is subject to the approval of the negotiated rulemaking committee.

(l) Committee facilitator. The committee facilitator:

(1) is subject to the standards and duties prescribed by Civil Practice and Remedies Code §154.053(a) and (b);

(2) will encourage and assist the parties in reaching a settlement of their dispute but may not compel or coerce the parties to enter into a settlement agreement;

(3) may not disclose to either party information given in confidence by the other, unless expressly authorized by the disclosing party; and

(4) will at all times maintain confidentiality with respect to communications relating to the subject matter of dispute arising through the negotiated rulemaking process.

(m) Committee activities. The negotiated rulemaking committee will negotiate for a consensus proposal on the rulemaking. Consensus requires that each committee member must concur for there to be a committee recommendation. When the committee concludes its negotiations, it will submit a report to the commission.

(1) If the negotiated rulemaking committee does not reach consensus, it may forward to the commission any information it has compiled to the agency.

(2) If the negotiated rulemaking committee does reach consensus, it will forward the rule language to the commission.

(n) Commission decision on negotiated rulemaking. The commission will consider the negotiated rulemaking committee's consensus recommendation. The commission may approve the committee's negotiated rule language, amend the committee's negotiated rule language, or decline to adopt a rule created through the negotiated rulemaking process. The commission may propose its own rule. The commission may not adopt a rule or provision for which it has no legal authority to adopt.

(o) APA rulemaking requirements apply. If the commission proceeds with rulemaking resulting from the committee's consensus recommendation, the rule must be proposed, published for comment, and considered in accordance with all of provisions of Government Code Chapter 2001 Subchapter B regarding rulemaking requirements of the Administrative Procedure Act.

(p) Notice of proposed rulemaking. If the commission proposes rule language resulting from consensus of the negotiated rulemaking committee, the commission will publish notice in the *Texas Register*. The notice will include a statement that negotiated rulemaking was used in developing the proposed rule. The notice will state that the negotiated rulemaking committee's report is available to the public and will inform the public where and when the report may be reviewed.

(q) Conformity with law. Negotiated rulemaking does not, in any way, obviate the commission's jurisdiction or delegate the commission's decision or rulemaking authority. Negotiated rulemaking does not lessen the requirements of Government Code Chapter 2001 Subchapter B regarding rulemaking.

(r) Appointments. The commission may select any method of negotiation specified in Government Code Chapter 2008, including the appointment of a convener, negotiated rulemaking committee members, and a facilitator. Persons will be appointed to these positions by a majority vote of the commission. Persons appointed to these positions serve at the pleasure of the commission. The commission may remove a member from the committee by a majority vote of the commission.

(s) Conditions of appointment. Persons appointed as convener, negotiated rulemaking committee member, or facilitator will attend the committee meetings. Absence from two or more consecutive meetings without approval of the commission may result in removal of the person from the appointed position.

(t) Duration of appointment. Appointment of a person as convener, negotiated rulemaking committee member, or facilitator ends upon the earlier of:

(1) commission decision to end the negotiated rulemaking process;

(2) commission adoption of a rule resulting from the negotiated rulemaking process; or

(3) resignation from the appointed position.

(u) No compensation. Other than commission employees, persons appointed as convener, negotiated rulemaking committee member, or a facilitator shall serve without compensation and are not entitled to reimbursement from the commission for travel or per diem incurred in the performance of the appointed position.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901233

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 463-3926



10 TAC §300.15

The Texas Residential Construction Commission (commission) proposes new 10 TAC §300.15, regarding the warranties and performance standards advisory committee. The proposed new rule is part of an overall plan to consolidate the commission's administrative rules. In this same issue of the *Texas Register*, the commission concurrently proposes repeal of the existing rule relating to the warranties and performance standards advisory committee, i.e., 10 TAC §301.3.

Proposed new §300.15 incorporates portions of §301.3, with modifications. Minor or inconsequential modifications of existing §301.3 are proposed regarding the commission's appointment of the committee members, staff's supporting role and administrative assistance to the committee, the original constituency of the committee, ineligibility of committee members to receive compensation, issuance of notice of committee meetings, public participation, recommendations by the committee to the commission for change to a performance standard, and the commission's annual evaluation of the cost and effectiveness of the committee.

Proposed §300.15 includes new provisions and excerpts from existing §301.3 that have been modified. For example, proposed §300.15 is formatted to allow for easier reading of the subsections; reflects the commission's current practice of making appointments to the committee during an open meeting February of each year and as necessary to fill an unfulfilled position; informs the reader as to the purpose and mission of the advisory committee; adds to the committee constituency a presiding officer

for consistency with the requirements of Government Code §2110.003; provides procedures for the commission's removal of members from the committee; sets term limitations and attendance requirements for members; establishes the committee meeting requirements; clarifies the type of member and quantity of members that must be present at the advisory committee meeting to create a quorum; provides the procedures for members to add an item to the committee's agenda; encourages in-person participation by the public at a committee meeting, especially when a member of the public submits recommendations to the committee for change to a performance standard; and establishes the date in year 2013 for termination of the committee by operation of rule, unless continued by official commission action.

The provisions of §300.15 relate to a specific advisory committee, i.e., the warranties and performance standards advisory committee. Section §300.15 is proposed for consistency with §300.5, which provides the general rules applicable to any advisory committee the commission creates. The proposed rule is necessary to maintain the viability, balance, efficiency, and effectiveness of the warranties and performance standards advisory committee.

Subsection (a) is derived from and is consistent with existing §301.3(a). The proposed new rule reflects the commission's current practice of making appointments to the committee during an open meeting each February and as necessary to fill any open positions.

Proposed subsection (b) is derived from existing §301.3(b). It is the responsibility of the commission to make final decisions regarding the warranties and performance standards. However, this subsection clarifies that the purpose of the advisory committee is to provide information and serve as a technical resource to the commission in support of the commission's policy-making role.

Proposed subsection (c) requires the advisory committee to develop a mission statement. As discussed previously in this preamble, it is the commission's usual practice to make committee appointments each February. The committee will review the mission statement and consider whether modification to the mission statement is necessary. This review is scheduled to take place at the first committee meeting following the February appointments in order to promote consensus among the committee members as to the role, responsibility, and mission of the committee.

Proposed subsection (d) assigns to commission staff certain administrative duties to assist the committee in furtherance of its responsibilities. The staff is not a voting member of the committee, is not counted as a member of the committee for establishing a quorum of committee members, and assists the presiding officer of the committee in preparation of reports submitted to the commission. This proposed subsection is derived from and is consistent with existing §301.3(d).

Proposed subsection (e) describes qualifications of those persons whom the commission may appoint to fill a particular position on the committee. The proposed subsection is the language from existing §301.3(e), modified to emphasize the need for a diverse committee and to add a committee member from academia. The reason for specifying distinct positions is to achieve a committee that is sufficiently technical, balanced in representation of industry and consumer interests, and that serves its purpose in support of the commission's decision-making responsibilities. Adding a committee member

from academia who favors neither builders nor homeowners and who is an expert in the building industry promotes this goal.

New subsections (f) and (g) relate to the committee's presiding officer and are proposed to implement Government Code §2110.003. The commission appoints members to the committee; the committee members select a presiding officer from among themselves. In an effort to maintain balance between industry and consumer interests, the presiding officer will participate in discussions about the warranty and performance standards. However, proposed subsection (g) provides that the presiding officer will not cast a vote except when the need arises to break a tie among the committee members. For the purpose of establishing a quorum of the committee members, the presiding officer will not be counted. The current presiding officer will serve until the commission's next series of appointments in February 2010. Thereafter, the committee will select its presiding officer from among themselves. The committee may select any member to be the presiding officer, including the current presiding officer, because the person currently serving as the presiding officer is not a member of the committee and because the individual serves in that position until a qualified replacement is selected by the committee. The commission considers this to be completion of an unfulfilled term without membership. With the proposed addition in subsection (e) of the faculty member position as a member of the committee, the existing §301.3(c) is omitted from proposed new §300.15.

New proposed subsection (h) provides the terms' expiration in accordance with members' appointments to the various positions described in proposed subsection (e). This proposed subsection is derived in part from and is consistent with existing §301.3(g). This advisory committee is well established; therefore, it is no longer necessary for the commission's rule to describe the method by which the initial appointment terms were originally staggered. Instead, it is necessary to describe when the appointment term expires. In other words, the position dictates the term's expiration rather than the length of time served by the person in the particular position. The proposed subsection describes which positions' terms expire in even-numbered and in odd-numbered years. There exist two positions on the committee that are filled by two persons. Therefore, each year one of the two persons' positions will expire. Of the two persons, the one whose term expires is the one with the greatest length of service to the committee in that position. The first full term for the academic faculty position described in subsection (e)(9) of this proposed rule begins February 2010. The commission may appoint a person to the position before February 2010. However, if the commission makes the appointment before February 2010, the individual would not be able to serve a full term due to the timing of the effective date of this rule. Therefore, the first time that position expires is February 2012.

Proposed subsection (i), conditions of membership, is also derived in part from and is consistent with existing §301.3(g). This subsection establishes that a member continues to serve in a position until a qualified replacement is appointed. In addition, the proposed subsection creates for each member a responsibility to notify the committee's presiding officer and the executive director, in writing, if the member experiences a change in status that makes the person ineligible to serve in the position on the committee to which the commission made its appointment, which will then allow the commission to take action to replace that person if it so desires.

New subsection (j) is proposed to establish two ways for removing a member from the committee. The commission may, on its own motion, remove any member at any time for any reason. An administrative process is also available for the chair of the commission to remove a member from the committee if the member fails to meet minimum attendance requirements or experiences a change in status thereby making the person ineligible to fill the position on the committee for which the commission appointed the individual.

For example, if a person were appointed in the capacity of a professional engineer and subsequently forfeited the professional engineering license for any reason, then the person would no longer be eligible to fill that position. Similarly, if a person were appointed to fill one of the homeowner representative positions and thereafter accepted employment working in public relations for a builder's trade association, then the individual would no longer be eligible to serve on the committee in the position for which the commission appointed that member. As discussed, a member who experiences a change in status that makes the person ineligible is required to inform the presiding officer of the committee and the executive director. The new subsection is proposed to afford the commission a process for the efficient removal of members who are unable or ineligible to serve the committee. Thereafter, the commission may appoint a qualified replacement to the committee. The proposed new subsection should have an immediate and direct positive impact on the effectiveness of the advisory committee.

New subsection (k) is proposed to establish limitations on the terms for which the commission may appoint a member. If a member serves two consecutive two-year terms, the commission will not reappoint the member until after the member has experienced a break in service to the committee. However, a member is eligible to serve two consecutive two-year terms on the committee, break from service, and then return to the committee as an appointed member for another two consecutive two-year terms. The proposed subsection clarifies that a committee member's time spent in appointment to complete an unfulfilled term does not count toward calculation of the term limitation.

Consider, for example, if a member resigns voluntarily from service to the committee. The commission appoints a replacement to the committee in accordance with the requirements of this rule. The replacement serves the committee, fulfilling the last four months remaining on the previous member's unfulfilled term. Seeing that the replacement has attended the called committee meetings and has made significant contributions toward the committee's mission, the commission decides to appoint the replacement as a member for a two-year term. In this example, the replacement's four months of service to complete the previously unfulfilled term of the former member does not contribute toward the member's term limitations as set forth in this subsection.

Proposed subsection (l) is derived from §301.3(i). Currently, the committee is required to meet twice a year unless directed otherwise by the commission. The proposed subsection increases the number of required committee meetings to at least quarterly. However, the committee may meet more often than four times a year. The proposed new rule affords the presiding officer an opportunity to call additional committee meetings.

New subsection (m) is proposed to establish minimum attendance requirements for committee members, requires members be in attendance to be counted present, and disallows attendance by proxy. The committee cannot function efficiently or be

an effective resource to the commission if the members do not regularly attend committee meetings.

Proposed subsection (n) is derived from and is consistent with existing §301.3(h). Members of the committee are volunteers. Proposed subsection (n) affirms that no compensation will be afforded to the members, including travel unless authorized by other law. The rule provision is consistent with the provisions of Government Code §2110.004.

New subsection (o) is proposed to clarify that members may discuss warranties and performance standards at any meeting; however, voting decisions or official action may only be taken during a committee meeting with a quorum of the voting members present. A quorum is established by the presence of seven or more voting members. Although the presiding officer will cast a vote when the committee's vote results in a tie, the presiding officer's presence does not count toward establishment of the committee's quorum. Likewise, the presence of the executive director or the executive director's designee does not count toward establishment of a quorum because these individuals are not voting members of the committee appointed by the commission.

Proposed subsection (p) provides requirements for proper notice of the committee meetings. This proposed subsection is derived from and is consistent with existing §301.3(j).

New subsection (q) is proposed to establish the procedures by which any member of the committee may request an item be added to the committee meeting agenda. If a member requests change of a performance standard, the member will submit the request, the recommendation, and supporting materials no later than thirty days before the committee meeting. When other types of recommendations are requested for posting to the committee's agenda, the member may submit the request no later than the fifteenth day before the meeting. The proposed deadlines are needed to accommodate notice requirements under Government Code Chapter 551 and to allow adequate time for distribution of the materials to the committee members before the committee meeting.

Proposed subsection (r) is included to encourage public participation in the advisory committee meetings, especially when a member of the public suggests a change that the committee members will discuss and consider at a committee meeting. This proposed subsection is derived from existing §301.3(k).

Proposed subsection (s) requires the presiding officer of the committee to submit a report to the commission, including the committee meeting minutes, summary of the meeting, and the committee's recommendations. The proposed subsection is derived from existing §301.3(l). The proposed rule omits the thirty-day deadline for preparation and submission of the report to the commission.

Proposed subsection (t) prescribes the process by which the committee will submit recommendations for change to a performance standard. The proposed subsection is derived from and is consistent with existing §301.3(m).

Proposed subsection (u) requires the commission's evaluation of the costs and effectiveness of the advisory committee each year. The proposed subsection is derived from and is consistent with existing §301.3(n).

Proposed subsection (v) establishes that the committee will continue to exist through April 30, 2013. The proposed subsection

is derived from existing §301.3(o) and is consistent with the requirements of Government Code §2110.008.

Ms. Susan K. Durso, General Counsel for the commission, has determined that for each year of the first five-year period the proposed new rule is in effect, there will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the section.

Ms. Durso has also determined that for the first five years the proposed new rule is in effect the public will benefit from having all rules related to the commission's administration consolidated into a single chapter of the Texas Administrative Code. In addition, the public will benefit because the proposed rule provides clarity regarding the committee's roles, responsibilities, procedures, and processes, thereby effectuating efficiency for the committee which in turn should increase the support provided by the advisory committee to the commission. There will be no effect on individuals or on large, small, or micro businesses as a result of the proposed rule because the rule is being moved to another administrative rule chapter.

Ms. Durso has also determined that for each year of the first five-year period the proposed new rule is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act §2001.022.

Written comments (12 copies) on the proposed new rule may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, by delivery to 311 East 14th Street, Austin, Texas 78701; or by fax to (512) 475-0561; or by mail to P.O. Box 13509, Austin, TX 78711-3509. Comments submitted by mail must be post marked by the deadline date. In the alternative, comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Rulemaking on Warranties and Performance Standards Advisory Committee" in the subject line. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed new rule in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the rule under consideration. Comments on the simultaneously proposed repeal of §301.3 of this title may be submitted together with comments on this proposed new §300.15. Comments submitted electronically to a different email address or that do not have "Rulemaking on Warranties and Performance Standards Advisory Committee" in the subject line may not be considered.

The new rule is proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16; Government Code Chapter 2110 regarding the requirements of state agency advisory committees; and the Administrative Procedure Act, Government Code Chapter 2001.

No other statute, article, or code is affected by the proposal.

§300.15. Warranties and Performance Standards Advisory Committee.

(a) Commission appointment. The commission shall appoint an advisory committee to be referred to as the Warranties and Performance Standards Advisory Committee. The commission shall make appointments to the advisory committee each February and as otherwise required to maintain the committee in accordance with the requirements of this section.

(b) Purpose. The purpose of the committee is to provide a mechanism that allows for regular and reasoned review of the residential construction performance standards adopted by the commission. The committee's role is to provide information to the commission and to serve as a technical resource in support of the commission's policy-making function. The committee shall review and evaluate proposed changes to the performance standards made either by the public or internally by the commission, and make recommendations to the commission.

(c) Mission statement. The committee shall create a mission statement. The committee shall review and consider revision of the mission statement at the first committee meeting following the commission's appointments to the advisory committee in February in accordance with the requirements of subsection (a) of this section.

(d) Staff. The executive director shall appoint a member of the commission staff to serve and assist the committee. This position shall be non-voting. This person shall keep minutes of committee meetings, prepare those minutes for approval by the presiding officer of the committee, and shall assist the presiding officer in preparing the reports required by this section.

(e) Committee constituency. To achieve a diverse advisory committee, the commission shall appoint members from each of the following industry and consumer interests:

(1) One third-party inspector certified by the commission under Chapter 303 of this title.

(2) One professional engineer certified by the commission under Chapter 303 of this title.

(3) Two persons not licensed by the State Bar of Texas, knowledgeable in the construction industry, who have provided a material amount of assistance on behalf of consumers or homeowner interests in legal and non-legal matters.

(4) Two persons who are homeowners, who are not builders and who do not own and are not employed or otherwise engaged in a trade involving residential construction.

(5) One attorney licensed in the State of Texas with a significant history of representing consumers in the area of alleged home construction disputes with builders.

(6) Three persons, each of whom is a registered builder or representative of registered builders under Chapter 303 of this title. It is the desire of the commission that these members shall represent remodelers and builders of different sizes as determined by the volume of residential construction projects registered with the commission in a single calendar year.

(7) One person who is a representative of a trade association that is composed of builders, remodelers and associate members related to residential construction.

(8) One attorney licensed in the State of Texas with a significant history of representing builders in the area of alleged home construction disputes with homeowners.

(9) Starting in year 2010, one faculty member from a general academic teaching institution as that term is defined under Education Code §61.003, with expertise in:

(A) construction science or construction management;

(B) architectural engineering with emphasis in residential structural design and construction;

(C) civil engineering with emphasis in residential structural design and construction;

(D) engineering sciences with emphasis in residential structural design and construction;

(E) structural engineering with emphasis in residential structural design and construction;

(F) mechanical engineering with emphasis in residential structural design and construction;

(G) architecture with emphasis in residential structural design and construction; or

(H) other related subject matter with emphasis in residential structural design and construction.

(f) Presiding officer selection. Annually, at the first meeting after February of each year, the advisory committee members will select from among themselves a neutral presiding officer who will strive to maintain balance among the committee members and facilitate open dialogue. The presiding officer will be one of the following three members:

(1) the third-party inspector certified by the commission under Chapter 303 of this title appointed by the commission to fill the committee position described under subsection (e)(1) of this section;

(2) a professional engineer certified by the commission under Chapter 303 of this title appointed by the commission to fill the position described under subsection (e)(2) of this section; or

(3) a faculty member from a general academic teaching institution appointed by the commission to fill the position described under subsection (e)(9) of this section.

(g) Presiding officer. The advisory committee's presiding officer:

(1) schedules and conducts the committee meetings;

(2) serves as the lead administrator;

(3) promotes discussion on substantive standards and technical considerations;

(4) manages the member's discussion, ensuring the opportunity for balanced input from each member and from the public;

(5) directs dialogue away from policy-making matters;

(6) advocates positions representing the balanced interests of all agency stakeholders; and

(7) does not cast a vote, except in the case of a tie of the advisory committee members when a quorum is present.

(h) Expiration of terms. The term of office shall be staggered for a two-year term for each member appointed by the commission under subsection (e) of this section. Appointment of a member to complete an unfulfilled term does not affect expiration of the term.

(1) Each odd numbered year, the appointment term expires for the:

(A) third-party inspector certified by the commission under Chapter 303 of this title;

(B) attorney licensed in the State of Texas with a significant history of representing consumers in the area of alleged home construction disputes with builders.

(C) registered builder or representative of registered builders under Chapter 303 of this title that was appointed to represent remodeler and builder companies with a medium volume of registered homes; and

(D) person who is a representative of a trade association that is composed of builders, remodelers, and associate members related to residential construction;

(2) Each even numbered year, the appointment term expires for the:

(A) professional engineer certified by the commission under Chapter 303 of this title;

(B) registered builder or representative of registered builders under Chapter 303 of this title that was appointed to represent remodeler and builder companies with a small volume of registered homes;

(C) registered builder or representative of registered builders under Chapter 303 of this title that was appointed to represent remodeler and builder companies with a large volume of registered homes;

(D) attorney licensed in the State of Texas with a significant history of representing builders in the area of alleged home construction disputes with homeowners; and

(E) faculty member from a general academic teaching institution.

(3) Each year, the appointment term expires for:

(A) the member with the longer term of service of the two persons who are homeowners, who are not builders and who do not own and are not employed or otherwise engaged in a trade involving residential construction; and

(B) the member with the longer term of service of the two persons not licensed by the State Bar of Texas, knowledgeable in the construction industry, who have provided a material amount of assistance on behalf of consumers or homeowner interests in legal and non-legal matters.

(i) Conditions of membership. Membership to the advisory committee is conditional. A member whose term has expired shall continue to serve until a qualified replacement is appointed by the commission. In the event that a member appointed by the commission cannot complete his or her term or is removed by the commission, the commission shall appoint a qualified replacement to serve the remainder of the term. If a member experiences a change in status making the member ineligible to serve in the position described in subsection (e) of this section for which the commission made the appointment, the member shall provide written notification of the change in status to the presiding officer of the committee and to the executive director.

(j) Removal of member. Members of the committee serve at the pleasure of the commission. Members of the advisory committee may be removed:

(1) by a majority vote of the commission for any reason; or

(2) by administrative action taken at the discretion of the commission chair in response to:

(A) the member's failure to meet the attendance requirements described in this section;

(B) a change in the member's status that makes the member ineligible for service in the capacity for which the commission appointed the member; or

(C) a member's voluntary resignation.

(k) Term limitations. The terms of a member's service to the committee are limited.

(1) A member may not serve more than two consecutive two-year terms on the advisory committee. After a minimum break of two years from service on the advisory committee, the commission may reappoint a former member who has previously served two consecutive terms on the advisory committee.

(2) The presiding officer serves a one-year term as presiding officer. The presiding officer may serve more than one, one-year term. The members of the advisory committee shall not choose a presiding officer that does not meet the requirements of paragraph (1) of this subsection.

(3) The time a member serves appointed to the committee to complete an unfulfilled term does not contribute toward calculation of any term limitation under this subsection.

(l) Committee meetings. The committee shall meet at least quarterly. The commission will post a list of the anticipated quarterly meeting dates on its website. The presiding officer may call additional committee meetings, as necessary. The committee shall be subject to meeting at the call of the presiding officer.

(m) Attendance requirements. It shall be the goal of each member to attend all committee meetings.

(1) Members must be in attendance at the committee meeting to be counted present.

(2) Members may not be counted present by proxy.

(3) If the committee meets only quarterly, each member is required to be present at two or more of the quarterly meetings in a twelve month period.

(4) If the committee meets more often than quarterly in a twelve-month period, each member is required to be present at more than one-half of the total number of committee meetings in a twelve month period.

(5) If a member is not present at the required number of meetings, the presiding officer shall forward to the commission chair a statement of the number and dates of absence and any available information regarding the reasons for the absence and the member's historical participation levels, so that the commission can make a decision on whether to replace the member.

(n) No compensation. Committee members appointed by the commission shall serve without compensation. Members are not entitled to reimbursement from the commission for travel or per diem incurred in the performance of their official duties, unless such reimbursement is expressly provided for in the agency's general appropriations.

(o) Quorum. Any number of committee members may meet; however, to take a vote or to take official action, a quorum of committee members must be present during the advisory committee meeting and vote. A quorum consists of a minimum of seven voting members. The presence of the presiding officer does not contribute toward establishment of a quorum. The presence of the executive director or the executive director's designee does not contribute toward establishment of a quorum.

(p) Notice of meeting. The presiding officer shall coordinate with the commission to ensure all interested parties are provided with reasonable notice of the committee meeting. All public notices of upcoming meetings shall encourage interested parties to make suggested changes to the performance standards to the committee for its consideration. Each notice of meeting shall include information on how to submit to the committee suggested changes to the performance standards. All meetings shall be conducted in accordance with Chapter

551 of the Government Code and notices of meetings shall be posted in compliance with Chapter 551 of the Government Code.

(q) Committee agenda. A member may add a relevant item to the committee meeting agenda by submitting a written request to the staff described in subsection (d) of this section.

(1) A member must submit recommendations for change to a performance standard at least thirty days before the committee meeting and must include:

(A) supporting materials;

(B) a brief explanation of the performance standard;

(C) the reason the new or amended performance standard should be adopted or repealed; and

(D) the complete text of the suggested change, striking through the words to be deleted from the current performance standard and underlining the words to be added to the current performance standard.

(2) A member must submit recommendations other than those relating to a performance standard modification and any supporting materials at least fifteen days before the committee meeting.

(3) A member's request for an item to be added to the committee agenda is not a petition for rulemaking under §300.12 of this title.

(r) Public participation. Any interested person may submit to the advisory committee a suggested change to the warranty and performance standards.

(1) The committee must receive a suggested change to the performance standards no later than thirty days before the committee's next public meeting.

(2) A suggested change to the performance standards shall be in writing and shall include a brief explanation of the performance standard, the reason the new or amended performance standard should be adopted or repealed, and complete text for the suggested change.

(3) All proposed text to amend a performance standard shall be indicated by striking through the words, if any, to be deleted from the current performance standard and by underlining the words, if any, to be added to the current performance standard.

(4) The submission to the committee of a suggested change to the performance standards shall not be considered a petition for rulemaking under §300.12 of this title.

(5) A person who submits a suggested change should attend the committee meeting and participate in the discussion to advocate the person's desired outcome.

(s) Reports. For each committee meeting, the presiding officer shall prepare a report and provide it to the commission. The committee report shall contain the minutes of the meeting, a memo summarizing the meeting, and recommendations by the committee.

(t) Recommendations. If the committee recommends a change to the performance standards, the committee shall submit a draft rule to the commission for consideration for rulemaking. The committee shall attach the original suggested change to the draft rule. The committee shall also report to the commission a synopsis of all suggested changes submitted to the committee that the committee declined to recommend. The commission shall consider the committee's report at a public commission meeting following submission of the committee's report.

(u) Evaluation of costs and effectiveness. The commission shall evaluate the committee annually. Evaluation shall be conducted

by an evaluation team appointed by the executive director. The evaluation team shall report to the commission in open meeting each August the findings regarding the committee's work, usefulness, and the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee. The commission shall report this information to the Legislative Budget Board biennially in connection with the commission's request for appropriations.

(v) Committee continuation. The Warranties and Performance Standards Advisory Committee shall be abolished on April 30, 2013, unless otherwise continued by a majority vote of the commission prior to the date of expiration.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901237

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 463-3926



CHAPTER 301. GENERAL PROVISIONS

10 TAC §301.3

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Residential Construction Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Residential Construction Commission (commission) proposes repeal of 10 TAC §301.3, regarding the warranties and performance standards advisory committee. The proposed repeal is part of an overall plan to consolidate the commission's administrative rules. The repeal of §301.3 is the last section of Chapter 301 to be repealed. As a result of consolidating the general provisions rules into other chapters, Chapter 301 will be available for the commission's implementation of substantive rules. In this same issue of the *Texas Register*, the commission concurrently proposes a new rule, §300.15, incorporating the language of repealed §301.3, with changes.

Ms. Susan K. Durso, General Counsel for the commission, has determined that for each year of the first five-year period that the repeal is in effect, there will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the section.

Ms. Durso has also determined that for the first five years the repeal is in effect, the public will benefit from having all rules related to agency administration consolidated into a single chapter of the Texas Administrative Code. There will be no effect on individuals or large, small, or micro businesses as a result of the repeal because the rule is being moved to another administrative rule chapter.

Ms. Durso has also determined that for each year of the first five-year period the repeal is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act §2001.022.

Written comments (12 copies) on the proposed repeal may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, 311 E. 14th Street, Austin, Texas 78701, or by fax to (512) 475-0561. In the alternative, comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Rulemaking on Warranties and Performance Standards Advisory Committee" in the subject line. Comments on the simultaneously proposed new §300.15 of this title may be submitted together with comments on this proposed repeal of §301.3. Comments submitted electronically to a different email address or that do not have "Rulemaking on Warranties and Performance Standards Advisory Committee" in the subject line may not be considered. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed repeal in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the rule repeal under consideration.

The repeal is proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16; Government Code Chapter 2110 regarding state agency advisory committees; and the Administrative Procedure Act, Government Code Chapter 2001.

No other statute, article, or code is affected by the proposal.

§301.3 Warranties and Performance Standards Advisory Committee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901236

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 463-3926



CHAPTER 307. INSPECTIONS OF HOMES IN AREAS WITHOUT MUNICIPAL INSPECTIONS

10 TAC §307.7

The Texas Residential Construction Commission (commission) proposes amendments to 10 TAC §307.7, relating to failure to comply with inspection requirements for residential construction in areas not subject to municipal inspections.

Pursuant to changes in Title 16 of the Property Code that became effective on September 1, 2008, builders and remodelers who undertake certain residential construction projects in areas not subject to municipal inspections are required to have those projects inspected at several stages of construction. This requirement for interim construction inspections, which are similar to the code compliance inspections required on residential projects built within most municipalities, provides homebuyers and homeowners who live in areas not subject to municipal inspections the same level of assurance of quality construction that those with construction projects subject to municipal inspections enjoy. Because this requirement is relatively new, the commission anticipates that some builders and remodelers will either be

unaware of the requirement at the time of construction or will forget to have a phase inspection performed before moving to the next phase of construction. Still others may choose to intentionally ignore the requirements.

New home construction must have an inspection prior to the pouring of a foundation, prior to the installation of wall coverings for plumbing and electrical inspections, and at the substantial completion of the project. For remodeling projects and material improvements, inspections are required for the same phases to the extent that the inspection is applicable to the work performed. For the phase inspections that are performed before completion of the project, it can be difficult to access or view the relevant components to determine whether they were correctly installed.

The commission sought input from interested parties on methods of forensic investigation that might provide some level of assurance. The results of that informal query led the commission to conclude that there are a variety of forensic evaluations that could be appropriate for different construction methods and different phases of construction; therefore, it is best left to the investigating expert to determine which forensic tests need to be performed for the expert to issue an opinion that the home has been constructed properly. Forensic evaluations performed post-construction are likely to cost the builder or remodeler more than if the inspections had been conducted at the correct phases of construction. Therefore, the commission is revising its rule on the consequences for failure to conduct the proper phase inspections and the penalties associated with that failure to provide incentives for builders/remodelers to have post-construction forensic evaluations performed when phase inspections have not been timely performed. The commission's proposed amendments recognize that an unintentional failure to have the required inspections performed should not subject the builder to the same penalties that an intentional failure to abide by the law would require.

Ms. Susan K. Durso, General Counsel for the commission, has determined that for each year of the first five-year period that the proposed amendments are in effect there will be a minor increase in expenditures or revenue for state government, if a greater number of penalties are collected for violations of the inspection requirements. There will be no fiscal impact for state or local government as a result of enforcing or administering the amended rule.

Ms. Durso has also determined that for the first five years the proposed amendments are in effect the public will benefit from the amended rule. The increased cost to remedy the failure to comply with state law will serve as an incentive for builders and remodelers to have the phase inspections performed timely and will deter future non-compliance. Homeowners will have greater assurance that their homes have been properly constructed.

Ms. Durso has also determined that the anticipated economic cost to small businesses or persons who are required to comply with the proposed amendments will be within the control of those businesses and persons. Increased costs can be avoided by complying with the phase construction inspection requirements.

Ms. Durso has also determined that for each year of the first five-year period the proposed amendments are in effect there should be no affect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Ms. Durso has also determined that for each year of the first five-year period the proposed amendments are in effect any adverse economic affect on small businesses is completely within the control of the business. The law requires that phased construction inspections be performed; increased costs of construction resulting from having to comply with the amendments are completely avoidable. Therefore, no regulatory flexibility analysis is necessary.

Written comments (12 copies) on the proposed amendments may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, by mail to P.O. Box 13509, Austin, TX 78711-3509; by hand to 311 E. 14th Street, Austin, Texas 78701; or by fax to (512) 463-9507. Comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Rule 307.7 - Failure to Comply with Inspection Requirements" in the subject line. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed amendments in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the rule under consideration. Comments submitted electronically to a different email address or that do not have "Rule 307.7 - Failure to Comply with Inspection Requirements" in the subject line may not be considered.

The amendments are proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code; and Property Code, Title 16, Subtitle F, requiring inspection of certain new residential construction.

No other statutes, articles, or codes are affected by the proposed amendments.

§307.7. Failure to Comply with Inspection Requirements.

(a) A builder or remodeler who fails to comply with the inspection requirements of this chapter will be subject to disciplinary action pursuant to the provisions of Chapter 305 of this title.

(b) The first time that the commission becomes aware that a builder/remodeler has neglected to have a phase inspection performed as required by this chapter, if the builder/remodeler brings the matter to the attention of the commission or is forthcoming with the commission about the oversight in response to a commission inquiry, and the builder/remodeler demonstrates that its failure to have the proper inspections performed was not the result of an intentional disregard for the law requiring inspections of new residential construction in areas in which a municipal inspection is not conducted, the commission will:

(1) notify the homeowner by letter that the builder/remodeler failed to comply with the County Inspection Program and the letter will identify the phases of construction that the new home or construction project should have been inspected;

(2) provide the builder/remodeler with a copy of the law and a link to the commission website for information about the inspection program and requirements; and

(3) undertake disciplinary action pursuant to subsection (a) of this section, in which the commission will offer the builder/remodeler an opportunity to enter an agreed order for disciplinary action including a reprimand and a minimum penalty of \$1,500 for each phase of the inspection not timely performed or in lieu of accepting a reprimand and monetary penalty, the builder/remodeler can choose the option to have post-construction forensic evaluations performed for all required phases of construction that were not timely performed, as further described in subsection (h) of this section.

(c) The first time that the commission becomes aware that a builder/remodeler has neglected to have a phase inspection performed as required by this chapter, if the builder/remodeler has not been forthcoming with the commission about the oversight, but demonstrates that its failure to have the proper inspections performed was not the result of an intentional disregard for the law requiring inspections as described in this chapter, the commission will:

(1) notify the homeowner by letter that the builder/remodeler failed to comply with the County Inspection Program and the letter will identify the phases of construction that the new home or construction project should have been inspected;

(2) provide the builder/remodeler with a copy of the law and a link to the commission website for information about the inspection program and requirements; and

(3) undertake disciplinary action pursuant to subsection (a) of this section, in which the commission will offer the builder/remodeler an opportunity to enter an agreed order for disciplinary action including a reprimand and a minimum penalty of \$3,000 for each phase inspection not timely performed or in lieu of accepting the monetary penalty, the builder/remodeler can choose the option to have post-construction forensic evaluations performed for all required phases of construction that were not timely performed, as further described in subsection (h) of this section.

(d) The first time that the commission becomes aware that a builder/remodeler has neglected to have a phase inspection performed as required by this chapter, if the builder/remodeler is not forthcoming with the commission about the oversight and cannot demonstrate that its failure to have the proper inspections performed was not the result of an intentional disregard for the law requiring inspections as described in this chapter, the commission will:

(1) notify the homeowner by letter that the builder/remodeler failed to comply with the County Inspection Program and the letter will identify the phases of construction that the new home or construction project should have been inspected;

(2) provide the builder/remodeler with a copy of the law and a link to the commission website for information about the inspection program and requirements; and

(3) undertake disciplinary action pursuant to subsection (a) of this section, in which the commission will offer the builder/remodeler an opportunity:

(A) to enter an agreed order for disciplinary action including a reprimand and a penalty of \$5,000 for each phase of inspection not timely performed; or

(B) to accept a reprimand and a total penalty of not greater than \$10,000 and have post-construction forensic evaluations performed for all required phases of construction that were not timely performed, as further described in subsection (h) of this section.

(e) For all instances after the first time that the commission becomes aware that a particular builder/remodeler has failed to have a phase inspection performed as required by this chapter, the commission will presume that the failure is the result of an intentional disregard for the law requiring phase inspections and will pursue appropriate disciplinary action for the violation under Chapter 305 of this title.

(f) After notification by the commission that it has become aware that builder or remodeler failed to timely have a phase inspection performed as required by this chapter under subsections (b), (c), (d), and (e) of this section, the builder or remodeler will be provided an opportunity to present information to the commission that the builder/remodeler's failure to have a phase inspection performed as required by

this chapter is not the result of an intentional disregard for the law and that information will be considered in determining the appropriate disciplinary action for the violation of this chapter.

(g) If a builder/remodeler neglects to have a phase inspection performed as required by this chapter but has a post-construction forensic evaluation performed and submits the results of the evaluations to the commission and to the homeowner for the subject property before receiving a notice of the failure to comply from the commission, the commission will presume that the failure to comply was not intentional.

(h) A builder/remodeler that has post-construction forensic evaluation performed under subsection (g) of this section or as a part of the penalty for failure to comply with this chapter must submit the following documentation for each applicable phase of construction not timely performed:

(1) For a foundation inspection, the builder/remodeler must submit an opinion letter signed and sealed by a licensed professional engineer that the engineer has performed an inspection of the foundation in accordance with generally accepted standards of engineering practice and has determined that the foundation will serve its intended purpose to the best of the engineer's knowledge. The letter must include a report on the inspection, including the forensic tests performed and any measurements taken, regardless of whether relied upon to make the determination.

(2) For an inspection of the framing and mechanical systems prior to the installation of insulation, wall board, or other wall covering facing the home's interior, the builder/remodeler must submit an opinion letter from a fee inspector qualified under this chapter to perform phase inspections affirming that the fee inspector has determined that the framing and mechanical systems are installed in compliance with the applicable Code. The letter must include a report on the inspection performed including any forensic tests performed and any measurements taken, regardless of whether relied upon to make the determination.

(3) For a final inspection upon substantial completion of the project, the builder/remodeler must submit an opinion letter from a fee inspector qualified under this chapter to perform phase inspections affirming that the fee inspector has determined that installation, operation, and performance of each aspect of the substantially completed project meets all applicable Code. Final inspection upon substantial completion of the project includes but is not limited to plumbing, electric, and mechanical delivery systems; yard grading; attic insulation; ventilation; egress; International Residential Code (IRC); and National Electric Code (NEC) requirements. The letter must include a report of the forensic tests performed and any measurements taken, regardless of whether relied upon to make the determination that all Code requirements are met.

(i) If a builder/remodeler has a post-construction forensic evaluation performed as part of the penalty for failure to comply with this chapter under subsection (h) of this section, the commission will provide that information to the homeowner.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.
TRD-200901240

Susan K. Durso
General Counsel
Texas Residential Construction Commission
Earliest possible date of adoption: May 10, 2009
For further information, please call: (512) 463-3926

TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 11. ADMINISTRATIVE DEPARTMENT

13 TAC §11.12

The Texas Historical Commission (Commission) proposes an amendment to §11.12, relating to Limitations on Responses to Public Information Requests. The purpose of this section is to further clarify the implementation of Texas Government Code §552.275, which allows governmental bodies to set limitations on the amount of time a governmental body must spend responding to requests under the Public Information Act without charging the requestor for the personnel time spent responding to the requests. The amendment would require that the Commission not waive charges to a requestor when such charges are applicable under this section.

F. Lawrence Oaks, Executive Director, has determined that for the first five-year period the rule is in effect there will not be fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Oaks has also determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this amended rule will be a limitation on the abuse of the Public Information Act that requires that agency resources be diverted from the mission of the Commission to serving the needs of a single requestor. Additionally, Mr. Oaks has determined that there will be no effect on small or micro businesses. There will be no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to F. Lawrence Oaks, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed under the Texas Government Code §442.005, which provides the Commission with authority to promulgate rules that will reasonably effect the purposes of this chapter, and Texas Government Code §552.275, which provides that governmental bodies may adopt rules on this subject.

No other codes, articles, or statutes are affected by this proposal.

§11.12. Limitations on Responses to Public Information Requests.

(a) - (l) (No change.)

(m) If the charges for labor to a requestor are applicable under this section, the commission shall not waive or reduce those charges.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 26, 2009.
TRD-200901194
Mark Wolfe
Chief Deputy Executive Director
Texas Historical Commission
Earliest possible date of adoption: May 10, 2009
For further information, please call: (512) 463-8817

TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 131. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER F. ADMINISTRATION

22 TAC §131.85

The Texas Board of Professional Engineers (Board) proposes an amendment to §131.85, relating to Board Rules Procedures. The proposed amendment is related to minimum requirements for the Board to accept a petition from the public for the development or adoption of a Board rule.

The proposed rule would require the Board to accept a petition for proposal, adoption, deletion, or amendment of a Board rule submitted by a minimum of 25 individuals or an association representing at least 25 individuals. The 25 person minimum is in line with Government Code §2001.029 regarding public hearings.

The Board welcomes all input on the scope and effectiveness of its rules. The purpose of this amendment is merely to set forth the standard for a formal petition requiring action by the Board.

Lance Kinney, P.E., Deputy Executive Director for the Board, has determined that for the first five-year period the proposed amendment is in effect there is no fiscal impact for the state and local government as a result of enforcing or administering the section as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is an efficient rulemaking process by the Board and to prevent frivolous or unsupported attempts to compel the Board to make or change rules.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of

its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendment.

§131.85. Board Rules Procedures.

(a) (No change.)

(b) Petition for Adoption of Rules. The board shall accept a petition submitted by at least 25 persons or by an association having at least 25 members [~~Any interested person can request the board~~] to adopt, delete, or amend a rule by filing a petition with the executive director, accompanied by any fee required by statute or board rules. The petition must be filed with the executive director at least 30 days and not more than 60 days prior to a regular board meeting at which board action will be taken. Such a petition will include, but need not be limited to, the following.

(1) Identity information. Full name and complete mailing address and telephone number of the petitioner on whose behalf the petition is filed.

(2) Reference. Reference to the rule which it is proposed to make, change or amend, or delete, so that it may be identified and prepared in a manner to indicate the word, phrase, or sentence to be added, changed, or deleted from the current text, if any. The proposed rule should be presented in the exact form in which it is to be published, adopted, or promulgated.

(3) A suggested effective date. The desired effective date should be stated.

(4) Justification. Justification for the proposed action in narrative form with sufficient particularity to fully inform the board and any interested party of the facts upon which the petitioner relies, including the statutory authority for the promulgation of the proposed rule.

(5) Desired effect of proposal. Include a brief statement detailing the desired effect to be achieved by the proposed rule, change, or amendment or deletion.

(6) Summary. A concise summary of the proposed rule, change, or amendment.

(7) Signatures. Signatures on the petition of the petitioners [~~petitioner~~] and/or the attorney or representative of the petitioners [~~petitioner~~].

(c) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901241

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 440-7723

CHAPTER 133. LICENSING

SUBCHAPTER B. PROFESSIONAL ENGINEER LICENSES

22 TAC §133.11

The Texas Board of Professional Engineers (Board) proposes an amendment to §133.11, relating to Types of Licenses. The proposed amendment is related to minimum requirements for the Board to accept a petition from the public for the development or adoption of a Board rule.

The proposed rule change relates to temporary licenses obtained via international agreements such as the North American Free Trade Agreement (NAFTA). Certain applicants have attempted to use the temporary licensure process to obtain a de facto permanent license, either through continual reapplication and renewal of the temporary license or by claiming a temporary license qualifies for licensure as a Former Texas License Holder.

The proposed rule clarifies that a temporary license has a maximum duration of three years and that once a temporary license has expired, a former temporary license holder cannot apply for a subsequent temporary license. In addition, the holder of a temporary license can start the standard license process while still holding a temporary license.

Lance Kinney, P.E., Deputy Executive Director for the Board, has determined that for the first five-year period the proposed amendment is in effect there is no fiscal impact for the state and local government as a result of enforcing or administering the section as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is the clarification of the temporary licensure process and verifying that licensees are qualified to practice engineering in Texas.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state, and §1001.310, which allows the board to adopt standards and procedures for issuing a temporary license.

No other statutes, articles or codes are affected by the proposed amendment.

§133.11. Types of Licenses.

The board shall receive, evaluate and process all applications for licensure as a professional engineer received from individuals who assert through the application process that they meet the minimum requirements of §1001.302 of the Act. The board shall deny a license to any applicant found not to have met all requirements of the Act and board rules.

(1) Standard License. Unless requested by the applicant or license holder, all licenses issued by the board shall be considered standard licenses. Standard licenses are fully renewable annually until such

time as the board takes specific action to prevent renewal or provision of the Texas Engineering Practice Act prevents renewal.

(2) Reciprocal License. The board does not recognize any jurisdiction for reciprocity at this time.

(3) Temporary License.

(A) A temporary license holder shall be subject to all other rules and legal requirements to which a holder of a standard license is subject. A temporary license may only be renewed twice for a total maximum duration of three years. [The executive director shall be authorized to convert a standard license to a temporary license.]

(B) After a temporary license has expired, a former temporary license holder may not apply for a subsequent temporary license.

(C) A current temporary license holder may initiate the standard licensure process.

(4) Provisional. The board does not issue provisional licenses at this time.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901242

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 440-7723



SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS

22 TAC §133.23

The Texas Board of Professional Engineers (Board) proposes an amendment to §133.23, relating to Applications from Former Standard License Holders. The proposed amendment clarifies the requirements for re-licensure by individuals who formerly held a standard Texas professional engineer license.

The proposed rule change clarifies that the re-licensure rule was intended for applicants that held a standard license and not those that were licensed via the emergency temporary or temporary international licensure process. These changes limit the use of this licensure process to former holders of a standard license only.

The proposed rule clarifies that a temporary license has a maximum duration of three years and that once a temporary license has expired, a former temporary license holder cannot apply for a subsequent temporary license. In addition, the holder of a temporary license can start the standard license process while still holding a temporary license.

Lance Kinney, P.E., Deputy Executive Director for the Board, has determined that for the first five-year period the proposed amendment is in effect there is no fiscal impact for the state and local government as a result of enforcing or administering the section as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the esti-

mated 1,000 small or 5,300 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is the clarification of the temporary licensure process and verifying that licensees are qualified to practice engineering in Texas.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state, and §1001.310, which allows the board to adopt standards and procedures for issuing a temporary license.

No other statutes, articles or codes are affected by the proposed amendment.

§133.23. Applications from Former Standard [Texas] License Holders.

(a) A former standard license holder, whose original license has been expired for two or more years and who meets the current requirements for licensure, may apply for a new license. This section does not apply to a former holder of a temporary license.

(b) A former standard license holder applying for a license under the current law and rules must have the documentation requested in §133.21 of this chapter (relating to Application) recorded and on file with the board and may request in writing that any transcripts, reference statements, evaluations, supplementary experience records or other similar documentation previously submitted to the board be applied toward the new application. The applicant shall:

- (1) submit a new application in a format prescribed by the board;
- (2) pay the application fee established by the board;
- (3) submit a completed Texas Engineering Professional Conduct and Ethics examination;
- (4) submit a supplementary experience record that includes at least the last four years of engineering experience, which may include experience before the previous license expired; and
- (5) submit also at least one reference statement conforming to §133.51 of this chapter (relating to Reference Providers), in which a professional engineer shall verify at least four years of the updated supplementary experience record.

(c) Once an application from a former standard license holder is received, the board will follow the procedures in §133.85 of this chapter (relating to Board Review of and Action on Applications) to review and approve or deny the application.

(d) Any license issued to a former standard [Texas] license holder shall be assigned a new serial number.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901243

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 440-7723

SUBCHAPTER D. EDUCATION

22 TAC §133.33

The Texas Board of Professional Engineers (Board) proposes an amendment to §133.33, relating to Proof of Educational Qualifications--Non-Accredited/Non-Approved Programs. The proposed amendment clarifies the requirements to accept a review of a foreign degree.

The proposed rule change removes a reference to an organization that no longer exists and clarifies that a foreign degree evaluation must indicate that a degree is equivalent to a degree from a U.S. educational institution.

Lance Kinney, P.E., Deputy Executive Director for the Board, has determined that for the first five-year period the proposed amendment is in effect there is no fiscal impact for the state and local government as a result of enforcing or administering the section as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is the clarification of the temporary licensure process and verifying that licensees are qualified to practice engineering in Texas.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state, and §1001.302, which allows the board to determine acceptable educational standards.

No other statutes, articles or codes are affected by the proposed amendment.

§133.33. Proof of Educational Qualifications--Non-Accredited/Non-Approved Programs.

(a) An applicant for licensure who has graduated from a program other than one in which the undergraduate or graduate degree in the same discipline has been [has been] accredited or approved by any of the organizations identified in §133.31(a)(1)(A) or (a)(2)(A) of this chapter (relating to Educational Requirements for Applicants) shall furnish both an official transcript and an evaluation for each degree to be relied upon to meet the educational requirements of licensure as a pro-

fessional engineer or certification as an engineer-in-training. Official transcripts shall include either grades or mark sheets and proof that the degree was conferred. In addition to providing a transcript reflecting the degree(s) earned by an applicant, the applicant shall also provide an official transcript from each school from which more than 15 semester hours were earned towards the degree.

(1) The applicant shall ensure that the required transcript(s) are forwarded from the officially recognized and approved institutional authority of records (e.g., registrar or other authority) of the institution from which the applicant graduated directly to a commercial degree evaluation service approved by the board. The applicant is responsible for ordering and paying for all such transcripts and evaluations. Additional academic information, including but not limited to grades and transfer credit, shall be submitted to the board at the request of the executive director.

(2) The degree evaluation must:

(A) validate the authenticity of the transcript, diploma, and any other supporting documentation;

(B) include a detailed, course-by-course evaluation of courses, including semester hours and grades;

(C) a comparison of the applicant's degree program to criteria of ABET applicable to the applicant's year of graduation; and a determination whether the curriculum of the degree program being evaluated meets the applicable criteria;

(D) establish that the applicant has received a conferred degree which is equivalent to a degree from a United States educational institution [as determined by the placement recommendations approved by the National Council for the Evaluation of Foreign Educational Credentials]; and

(E) be sent by the commercial evaluation service directly to the board, accompanied by the applicant's official transcript or a copy of the transcript verified by the commercial evaluation service.

(b) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901244

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 440-7723



SUBCHAPTER E. EXPERIENCE

22 TAC §133.43

The Texas Board of Professional Engineers (Board) proposes an amendment to §133.43, relating to Experience Evaluation for applicants. The proposed amendment clarifies the elements the Board may consider when evaluating engineering experience for applicants for licensure.

The proposed rule change allows the Board to consider if an applicant intends to perform or offer engineering services in Texas when evaluating engineering experience. The Board is

also proposing additional editorial changes to clarify and simplify the language used in the rule.

Lance Kinney, P.E., Deputy Executive Director for the Board, has determined that for the first five-year period the proposed amendment is in effect there is no fiscal impact for the state and local government as a result of enforcing or administering the section as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is the clarification of the temporary licensure process and verifying that licensees are qualified to practice engineering in Texas.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state, and §1001.302, which allows the board to determine satisfactory experience standards.

No other statutes, articles or codes are affected by the proposed amendment.

§133.43. Experience Evaluation.

(a) The board shall evaluate the nature and quality of the experience found in the supplementary experience record or the NCEES record experience information and shall determine if the work is satisfactory to the board for the purpose of issuing a license to the applicant. The board shall evaluate the supplementary experience record for evidence of the applicant's competency to be placed in responsible charge of engineering work of a similar character.

(1) Engineering work shall be satisfactory to the board and, therefore, considered by the board to be creditable engineering experience for the purpose of licensure if it is of such a nature that its adequate performance requires engineering education, training, or experience. The application of engineering education, training and experience must be demonstrated through the application of the mathematical, physical, and engineering sciences. Such work must be fully described in the supplementary experience record. Satisfactory engineering experience shall include an acceptable combination of design, analysis, implementation, and/or communication experience, including the following types of engineering activities:

(A) design, conceptual design, or conceptual design coordination for engineering works, products or systems;

(B) development or optimization of plans and specifications for engineering works, products, or systems;

(C) analysis, consultation, investigation, evaluation, planning or other related services for engineering works, products, or systems;

(D) planning the use or alteration of land, water, or other resources;

- (E) engineering for program management and for development of operating and maintenance manuals;
- (F) engineering for construction, or review of construction;
- (G) performance of engineering surveys, studies, or mapping;
- (H) engineering for materials testing and evaluation;
- (I) expert engineering testimony;
- (J) any other work of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature that requires engineering education, training or experience for its adequate performance; and
- (K) the teaching of engineering subjects by a person who began teaching prior to September 1, 2001.

(2) In the review of engineering experience, the board may consider additional elements including ~~[unique to the history of the applicant. Such elements may include]:~~

- (A) whether the experience was sufficiently complex and diverse, and of an increasing standard of quality and responsibility;
 - (B) whether the quality of the engineering work shows minimum technical competency;
 - (C) whether the experience was gained in accordance with the provisions of the Act;
 - (D) whether the experience was gained in one dominant branch;
 - (E) whether non-traditional engineering experience such as sales or military service provides sufficient depth of practice; ~~[and]~~
 - (F) whether short engagements have had an impact upon professional growth; and ~~[-]~~
 - (G) whether the applicant intends to practice or offer engineering services in Texas.
- (3) Engineering experience may be considered satisfactory for the purpose of licensing provided that:
- (A) the experience is gained during an engagement longer than three months in duration;
 - (B) the experience, when taken as a whole, meets the minimum time;
 - (C) the experience is not anticipated and has actually been gained at the time of application;
 - (D) the experience includes at least two years of experience in the United States, not including time claimed for educational credit, or otherwise includes experience that would show a familiarity with US codes and engineering practice; and
 - (E) the time granted for the experience claimed does not exceed the calendar time available for the periods of employment claimed.

(b) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901245
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: May 10, 2009
For further information, please call: (512) 440-7723



PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER D. RESPONSIBILITIES TO THE PUBLIC

22 TAC §501.82

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.82, concerning Advertising.

The amendment to §501.82 will function by requiring licensees to retain any electronic advertising transmissions for a period of 36 months.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

- A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.
- B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.
- C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer understanding of acceptable advertising.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 10, 2009. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333

Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.82. Advertising.

(a) A person shall not use or participate in the use of:

(1) any written, oral, or electronic communication having reference to the person's professional services that contains a false, fraudulent, misleading or deceptive statement or claim; nor

(2) any written, oral or electronic communication that refers to the person's professional services that is accomplished or accompanied by coercion, duress, compulsion, intimidation, threats, overreaching, or vexatious or harassing conduct.

(b) Definitions:

(1) A "false, fraudulent, misleading, or deceptive statement or claim" includes, but is not limited to, a statement or claim which:

(A) contain a misrepresentation of fact;

(B) is likely to mislead or deceive because it fails to make full disclosure of relevant facts;

(C) is intended or likely to create false or unjustified expectations of favorable results;

(D) implies educational or professional attainments or licensing recognition not supported in fact;

(E) represents that professional services can or will be completely performed for a stated fee when this is not the case, or makes representations with respect to fees for professional services that do not disclose all variables that may reasonably be expected to affect the fees that will in fact be charged;

(F) contains other representations or implications that in reasonable probability will cause a reasonably prudent person to misunderstand or be deceived;

(G) implies the ability to improperly influence any court, tribunal, regulatory agency or similar body or official due to some special relations;

(H) consists of self-laudatory statements that are not based on verifiable facts;

(I) makes untrue comparisons with other accountants; or

(J) contains testimonials or endorsements that are not based upon verifiable facts.

(2) Broadcast--Any transmission over the airwaves or over a cable, wireline, Internet, cellular, e-mail system or any other electronic means.

(3) Coercion--Compelling by force so that one is constrained to do what his free will would otherwise refuse.

(4) Compulsion--Driving or urging by force or by physical or mental constraint to perform or forbear from performing an act.

(5) Direct personal communication--Either a face-to-face meeting or a conversation by telephone.

(6) Duress--Any conduct which overpowers the will of another.

(7) Harassing--Any word, gesture, or action which tends to alarm and verbally abuse another person.

(8) Intimidation--Willfully to take, or attempt to take, by putting in fear of bodily harm.

(9) Overreaching--Tricking, outwitting, or cheating anyone into doing an act which he would not otherwise do.

(10) Threats--Any menace of such a nature and extent as to unsettle the mind of anyone on whom it operates, and to take away from his acts that free and voluntary action which alone constitutes consent.

(11) Vexatious--Irritating or annoying.

(c) It is a violation of these rules for a person to persist in contacting a prospective client when the prospective client has made known to the person, or the person should have known the prospective client's desire not to be contacted by the person.

(d) In the case of an electronic or direct mail communication, the person shall retain a copy of the actual communication ~~[mailing]~~ along with a list or other description of parties to whom the communication was ~~[mailed or otherwise]~~ distributed. Such copy shall be retained by the person for a period of at least 36 months from the date of its [the] last distribution ~~[transmission or use]~~.

(e) Subsection (d) of this section does not apply to anyone when:

(1) the communication is made to anyone who is at that time a client of the person;

(2) the communication is invited by anyone to whom it was made; or

(3) the communication is made to anyone seeking to secure the performance of professional services.

(f) In the case of broadcasting, the broadcast shall be recorded and the person shall retain a recording of the actual transmission for at least 36 months.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 26, 2009.
TRD-200901196

J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 10, 2009
For further information, please call: (512) 305-7842



22 TAC §501.86

The Texas State Board of Public Accountancy (Board) proposes new §501.86, concerning Disclosure of Subsequently Discovered Facts.

The new section will inform licensees of the need to inform the public when the licensee, after issuing an audit, subsequently becomes aware of information significantly affecting the audit opinion and the client refuses to disclose the information.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be none.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be to protect the public from relying on inaccurate audits.

The probable economic cost to persons required to comply with the new rule will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the rule does not impose any additional requirements, it merely clarifies existing requirements.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on May 10, 2009. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small business; if the new rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the new rule is to be adopted; and if the new rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the new rule under any of the following standards: (a) cost per employee; (b) cost for each

hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§501.86. Disclosure of Subsequently Discovered Facts.

If subsequent to the date of the report upon audited financial statements the licensee becomes aware that facts may have existed at that date which might have affected the report had he been aware of such facts, the licensee must investigate this new information in accordance with the standards established in AICPA Professional Standards AU Section 561 and follow its requirements, including disclosure, as necessary.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 26, 2009.

TRD-200901195

J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy
Earliest possible date of adoption: May 10, 2009
For further information, please call: (512) 305-7842



SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.90

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.90, concerning Discreditable Acts.

The amendment to §501.90 will function by specifically including perjury occurring in court proceedings as a discreditable act.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to insure the integrity of the profession and the protection of the public.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 10, 2009. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.90. Discreditable Acts.

A person shall not commit any act that reflects adversely on that person's fitness to engage in the practice of public accountancy. A discreditable act includes but is not limited to:

- (1) fraud or deceit in obtaining a certificate as a certified public accountant or in obtaining registration under the Act or in obtaining a license to practice public accounting;
- (2) dishonesty, fraud or gross negligence in the practice of public accountancy;
- (3) violation of any of the provisions of Subchapter J or §901.458 of the Act applicable to a person certified or registered by the board;
- (4) final conviction of a felony or imposition of deferred adjudication or community supervision in connection with a criminal prosecution of a felony under the laws of any state or the United States;
- (5) final conviction of any crime or imposition of deferred adjudication or community supervision in connection with a criminal prosecution, an element of which is dishonesty or fraud under the laws of any state or the United States, a criminal prosecution for a crime of moral turpitude, a criminal prosecution involving alcohol abuse or controlled substances, or a criminal prosecution for a crime involving physical harm or the threat of physical harm;

(6) cancellation, revocation, suspension or refusal to renew authority to practice as a certified public accountant or a public accountant by any other state for any cause other than failure to pay the appropriate registration fee in such other state;

(7) suspension or revocation of or any consent decree concerning the right to practice before any state or federal regulatory or licensing body for a cause which in the opinion of the board warrants its action;

(8) knowingly participating in the preparation of a false or misleading financial statement or tax return;

(9) fiscal dishonesty or breach of fiduciary responsibility of any type;

(10) failure to comply with a final order of any state or federal court;

(11) repeated failure to respond to a client's inquiry within a reasonable time without good cause;

(12) intentionally misrepresenting facts or making a misleading or deceitful statement to a client, the board, board staff or any person acting on behalf of the board;

(13) giving intentional false sworn testimony [swearing] or perjury in court or in connection with discovery in a court proceeding or in any communication to the board or any other federal or state regulatory or licensing body;

(14) threats of bodily harm or retribution to a client;

(15) public allegations of a lack of mental capacity of a client which cannot be supported in fact;

(16) voluntarily disclosing information communicated to the person by an employer, past or present, or through the person's employment in connection with accounting services rendered to the employer, except:

(A) by permission of the employer;

(B) pursuant to the Government Code, Chapter 554 (commonly referred to as the "Whistle Blowers Act");

(C) pursuant to:

(i) a court order signed by a judge; or

(ii) a summons

(I) under the provisions of the Internal Revenue Code of 1986 and its subsequent amendments,

(II) the Securities Act of 1933 (15 U.S.C. §77a et seq.) and its subsequent amendments, or

(III) the Securities Exchange Act of 1934 (15 U.S.C. §78a et seq.) and its subsequent amendments;

(D) in an investigation or proceeding by the board;

(E) in an ethical investigation conducted by a professional organization of certified public accountants; or

(F) in the course of a peer review under Section 901.159 of the Public Accountancy Act; or

(G) any information that is required to be disclosed by the professional standards for reporting on the examination of a financial statement.

(17) breaching the terms of an agreed consent order entered by the board or violating any Board Order.

(18) Interpretive Comment: The board has found in §519.7 of this title (relating to Misdemeanors that Subject a Person to Discipline by the Board) and §525.1 of this title (relating to Applications for the Uniform CPA Examination, Issuance of the CPA Certificate, a License, or Renewal of a License for Persons with Criminal Backgrounds) that any crime of moral turpitude directly relates to the practice of public accountancy. A crime of moral turpitude is defined in this chapter as a crime involving grave infringement of the moral sentiment of the community. The board has found in §519.7 of this title that any crime involving alcohol abuse or controlled substances directly relates to the practice of public accountancy.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 26, 2009.

TRD-200901197

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 305-7842



CHAPTER 512. CERTIFICATION BY RECIPROCITY

22 TAC §512.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §512.1, concerning Certification as a Certified Public Accountant by Reciprocity.

The amendment to §512.1 will function by requiring an applicant for reciprocity to identify all jurisdictions he has been certified and/or licensed in and all disciplinary actions taken or currently pending against him.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to disclose to the public disciplinary actions taken by other jurisdictions against CPAs relocating to Texas and to protect the public from individuals from other jurisdictions that should not be licensed in Texas.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on May 10, 2009. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§512.1. Certification as a Certified Public Accountant by Reciprocity.

(a) The certificate of a "certified public accountant" shall be granted by reciprocity to any individual who is qualified under §901.259 or §901.260 of the Act and has provided in the application for reciprocity the names of the jurisdictions in which the individual is or has been certified and/or licensed and provide all disciplinary actions taken or pending in those jurisdictions. [The individual's certificate or credentials in the original jurisdiction must be in good standing when the application is submitted and remain in good standing until the individual's application for certification by reciprocity has been approved and a certificate has been issued to the individual by this board.]

(b) An individual from a domestic jurisdiction demonstrates that he meets the requirements for certification by reciprocity by:

(1) satisfying one of the following conditions:

(A) the individual holds a certificate or license to practice public accountancy from a domestic jurisdiction that has been determined by the board pursuant to §512.2 of this title (relating to National Association of State Boards of Accountancy Verified Substantially Equivalent Jurisdictions) as having substantially equivalent requirements for certification; or

(B) the individual holds a certificate or license to practice public accountancy from a domestic jurisdiction that has not been determined by NASBA and the board to have substantially equivalent

certification requirements but has had his education, examination and experience verified as substantially equivalent to those required by the Uniform Accountancy Act by NASBA; or

(C) the individual meets all requirements for issuance of a certificate set forth in the Act other than the provision requiring proof of grades to be eligible to take the uniform CPA examination; or

(D) the individual met the requirements in effect for issuance of a certificate in this state on the date the individual was issued a certificate or license by another domestic jurisdiction; or

(E) after passing the uniform CPA examination, the individual has completed at least four years of experience practicing public accountancy within the ten year period immediately preceding the date of application in this state; and

(2) the individual meets the CPE requirements applicable to certificate holders contained in Chapter 523 of this title (relating to Continuing Professional Education).

(c) An individual from a foreign jurisdiction demonstrates that he meets the requirements for certification by reciprocity by:

(1) holding a credential that has not expired or been revoked, suspended, limited or probated, that entitles the holder to issue reports on financial statements issued by a licensing authority or professional accountancy body of another country that:

(A) regulates the practice of public accountancy and whose requirements to obtain the credential have been determined by the board to be substantially equivalent to the requirements of education, examination and experience contained in the Act; and

(B) grants credentials by reciprocity to individuals certified to practice public accountancy by this state;

(2) receiving that credential based on education and examination requirements that were comparable to or exceeded those required by the Act at the time the credential was granted;

(3) completing an experience requirement in the foreign jurisdiction that issued the credential that is comparable to or exceeds the experience requirement of the Act or has at least four years of professional accounting experience in this state;

(4) passing an international qualifying examination (IQEX) covering national standards that has been approved by the board; and

(5) passing an examination covering the laws, rules and code of professional conduct in effect in this state that has been approved by the board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 26, 2009.

TRD-200901198

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 305-7842

◆ ◆ ◆

PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The State Board of Examiners for Speech-Language Pathology and Audiology (board) proposes amendments to §§741.41, 741.64, 741.81, 741.103, 741.112, 741.161, and 741.162, new §§741.122, 741.163, and 741.211 - 741.215, and the repeal of §741.163, concerning the regulation and licensure of speech-language pathologists and audiologists.

BACKGROUND AND PURPOSE

The proposed rules are intended to update the rules so that they reflect the board's current operational procedures in processing and approving licensure applications and to provide clarification of the rules, so that the intent is not ambiguous for license holders and the public. The proposed amendments, repeal, and new rules are necessary to update and clarify existing licensure requirements for an audiologist by reflecting current national standards; add the definition and use for telehealth in the speech-language pathology and audiology profession; and add the requirements to administer a jurisprudence examination.

SECTION-BY-SECTION SUMMARY

The amendments to §741.41(a) are proposed to clarify the professional responsibilities of the license holder to inform the board office with updated personal data.

The amendments to §741.64(g) are proposed to clarify when and who should complete the initial contact with the client.

The amendments to §741.81 are proposed to clarify the educational documentation required for an audiology license.

The amendments to §741.103 are proposed to remove an outdated chart containing maximum permissible ambient noise levels as previously established by the American National Standards Institute (ANSI).

The amendments to §741.112 define when the effective date of the jurisprudence examination will begin.

New §741.122 is proposed to add the requirements to administer a jurisprudence examination.

The amendments to §741.161 are proposed to add the requirements to administer a jurisprudence examination at the time of renewal.

The amendments to §741.162 are proposed to clarify that jurisprudence examination can count as one hour of continuing education requirement for professional ethics.

The repeal of and new §741.163 are proposed to update the inactive status to a two-year renewal cycle.

New §§741.211 - 741.215 (Subchapter O) are proposed to clarify the definition of telehealth, provide service delivery models, provide guidelines for the use, provide limitation for services, and the requirements of personnel providing the services.

FISCAL NOTE

Joyce Parsons, Executive Director, has determined that for each year of the first five years the sections are in effect, there will be

no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS ECONOMIC STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

Ms. Parsons has also determined that there will be no adverse economic impact to small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. The economic costs to persons who are required to comply with new §741.122 is the new jurisprudence examination fee of \$35 that the licensee will pay to the online examination company. There is no anticipated negative impact on local employment. Therefore, an economic impact statement and regulatory flexibility analysis for micro-businesses and small businesses is not required.

PUBLIC BENEFIT

Ms. Parsons has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be to ensure the effective regulation of speech-language pathologists and audiologists in Texas, which will protect and promote public health, safety, and welfare.

REGULATORY ANALYSIS

The board has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The board has determined that the proposed amendments, repeal, and new rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Joyce Parsons, Executive Director, State Board of Examiners for Speech-Language Pathology and Audiology, MC-1982, P.O. Box 149347, Austin, Texas 78714-9347. Comments may also be sent through e-mail to speech@dshs.state.tx.us. Please write "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal of Subchapter O. Telehealth (telepractice) is scheduled for Friday, May 8, 2009, from 9:30 a.m. until 12:00 p.m., at the Department of State Health Services, Moreton Building, Room M-653, 1100 West 49th Street, Austin, Texas.

SUBCHAPTER D. CODE OF ETHICS; DUTIES AND RESPONSIBILITIES OF LICENSE HOLDERS

22 TAC §741.41

STATUTORY AUTHORITY

The amendment is proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendment affects Texas Occupations Code, Chapter 401.

§741.41. *Professional Responsibilities of License Holders.*

(a) A licensee shall:

(1) - (7) (No change.)

(8) terminate a professional relationship when it is reasonably clear that the client is not benefiting from the services being provided; [and]

(9) provide accurate information to clients and the public about the nature and management of communicative disorders and about the profession and the services rendered; [-]

(10) notify the board in writing of changes of name, highest academic degree granted, address, and telephone number. The board is not responsible for lost, misdirected, or undelivered mail; and

(11) notify the board of changes in name or preferred mailing address within 30 days of such change(s) which must include the name, mailing address, and zip code, and be mailed, telephoned, faxed, or sent by electronic mail to the executive director.

(b) - (l) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901247

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER E. REQUIREMENTS FOR LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS

22 TAC §741.64

STATUTORY AUTHORITY

The amendment is proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendment affects Texas Occupations Code, Chapter 401.

§741.64. *Requirements for an Assistant in Speech-Language Pathology License.*

(a) - (f) (No change.)

(g) A licensed speech-language pathologist shall assign duties and provide appropriate supervision to the assistant.

(1) Initial contacts directly with the client shall be conducted by the supervising speech-language pathologist in order to determine whether the assistant has the competence to perform specific duties before delegating tasks.

(2) This initial contact also applies when there is a change of the supervising speech-language pathologist.

[(1) Initial diagnostic contacts shall be conducted by the supervising speech-language pathologist.]

[(2) Following the initial diagnostic contact, the supervising speech-language pathologist shall determine whether the assistant has the competence to perform specific duties before delegating tasks.]

(3) - (7) (No change.)

(h) - (m) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901248

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER F. REQUIREMENTS FOR LICENSURE OF AUDIOLOGISTS

22 TAC §741.81

STATUTORY AUTHORITY

The amendment is proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendment affects Texas Occupations Code, Chapter 401.

§741.81. *Requirements for an Audiology License.*

(a) (No change.)

(b) The doctoral or master degree awarded prior to 2007, [graduate degree] shall be completed at a college or university that has a program accredited by the American Speech-Language Hearing Association Council on Academic Accreditation and holds accreditation or candidacy status from a recognized regional accrediting agency.

[(1) Original or certified copies of the transcripts showing the conferred degree shall verify the applicant completed the following:]

[(A) at least 36 semester credit hours shall be in professional course work acceptable toward a graduate degree;]

[(B) at least 24 semester credit hours acceptable toward a graduate degree shall be earned in the area of audiology, including hearing disorders, hearing evaluations, habilitative/rehabilitative procedures, and preventive methods, including the study of auditory disorders and habilitative/rehabilitative procedures across the life span; and]

[(C) six semester credit hours shall be earned in the area of normal development of speech and language speech disorders.]

[(2) A maximum of six academic semester credit hours associated with clinical experience and a maximum of six academic semester credit hours associated with a thesis or dissertation may be counted toward the 36 hours but not in lieu of the requirements of paragraph (1)(B) and (C) of this subsection.]

[(3) A quarter hour of academic credit shall be considered as two-thirds of a semester credit hour.]

[(4) An applicant who possesses a master's degree with a major in speech-language pathology and is pursuing a license in audiology may apply if the board has an original transcript showing the conferred degree showing completion of a master's degree with a major in speech-language pathology on file and a letter from the program director or designee of the college or university stating that the individual completed enough hours to establish a graduate level major in audiology and would meet the academic and clinical experience requirements for a license as an audiologist.]

[(c) [(5)] An applicant who graduated from a college or university not accredited by the American Speech-Language Hearing Association Council on Academic Accreditation shall have the American Speech-Language-Hearing Association Clinical Certification Board evaluate the course work and clinical experience earned to determine if acceptable. The applicant shall bear all expenses incurred during the procedure.

[(e) An applicant shall complete at least 25 clock hours of supervised observation before completing the minimum of the following hours of supervised clinical experience; which may be referred to as clinical practicum; with individuals who present a variety of communication disorders within an educational institution or in one of its co-operating programs:]

[(1) 275 clock hours if the master's or higher degree was earned prior to November 10, 1993; or]

[(2) 350 clock hours if the master's or higher degree was earned between November 10, 1993 and December 31, 2006; or]

[(3) 1400 clock hours if the master's or higher degree was earned on or after January 1, 2007.]

[(d) An applicant shall obtain a minimum of 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which clinical work has been accomplished in audiology as set out in §741.82 of this title (relating to Requirements for an Intern in Audiology License).]

[(1) An individual shall be licensed under §741.82 of this title prior to the beginning of the supervised professional experience.]

[(2) The supervisor of an individual who completed an internship in another state and met the requirements set out in §741.82 of this title shall:]

[(A) be licensed in that other state, rather than Texas; or]

[(B) hold the American Speech-Language-Hearing Association certificate of clinical competence in audiology if the other state did not require licensing.]

(d) [(e)] An applicant shall pass the examination as referenced by §741.121 of this title (relating to Examination Administration) within the past 10 years from the date of the application. [:]

[(1) the past 10 years; and]

[(2) two years of the completion date of the internship referenced in subsection (d) of this section.]

(e) [(f)] In the event the applicant passed the examination referenced in subsection (d) [(e)] of this section more than two years after the completion date of the internship, the applicant shall repeat the 36 weeks supervised internship before applying for the audiology license. The applicant shall obtain the intern license as required by §741.82 of this title (relating to Requirements for an Intern in Audiology License) prior to repeating the internship. The applicant may appeal to the board's designee for waiver of the requirement to repeat the internship.

(f) [(g)] An applicant who previously held the American Speech-Language-Hearing Association Certificate of Clinical Competence may have the certificate reinstated and apply for licensure under §741.83 of this title (relating to Waiver of Clinical and Examination Requirements for Audiologists).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901249

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER H. FITTING AND DISPENSING OF HEARING INSTRUMENTS

22 TAC §741.103

STATUTORY AUTHORITY

The amendment is proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendment affects Texas Occupations Code, Chapter 401.

§741.103. Requirements of Audiologists and Interns in Audiology Conducting Audiometric Testing for the Purpose of Fitting and Dispensing Hearing Instruments.

In accordance with the Act, a licensed audiologist or licensed intern in audiology who fits and dispenses hearing instruments, shall comply with this section when testing hearing for the purpose of determining the need for amplification.

(1) Licensees must adhere to the most current American National Standards Institute (ANSI[; S3-1, 1999]) octave band criteria for permissible ambient noise levels during audiometric testing. [as shown on the chart. The chart is excerpted from the standard for illustrative purposes and is based on a 125 to 8,000 Hz test frequency range.]

[Figure: 22 TAC §741.103(1)]

(2) - (4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901250

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER I. APPLICATION PROCEDURES

22 TAC §741.112

STATUTORY AUTHORITY

The amendment is proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendment affects Texas Occupations Code, Chapter 401.

§741.112. Required Application Materials.

(a) - (g) (No change.)

(h) After December 31, 2009, all applicants for licensure must submit proof of successful completion of the jurisprudence examination at the time of application. The jurisprudence examination must be completed no more than six months prior to the date of licensure application.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901251

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER J. LICENSURE EXAMINATIONS

22 TAC §741.122

STATUTORY AUTHORITY

The new rule is proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority

to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The new rule affects Texas Occupations Code, Chapter 401.

§741.122. Jurisprudence Examination.

(a) The department shall develop and administer a jurisprudence examination to determine an applicant's knowledge of the Act, this section, and any other applicable laws of this state affecting the practice of speech-language pathology or audiology.

(b) The examination shall be administered in a web-based format through an examination contract, which specifies that applicants for examination must be able to:

(1) pay the examination fee online by credit card; and

(2) receive their examination results electronically immediately upon completion of the examination.

(c) The department shall revise the jurisprudence examination as needed.

(d) After December 31, 2009, all applicants for licensure must submit proof of successful completion of the jurisprudence examination at the time of application. The jurisprudence examination must be completed no more than six months prior to the date of licensure application.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901252

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER L. LICENSE RENEWAL AND CONTINUING EDUCATION

22 TAC §741.161, §741.162

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The amendments affect Texas Occupations Code, Chapter 401.

§741.161. Renewal Procedures.

(a) - (t) (No change.)

(u) For all licenses renewing after December 31, 2009, the jurisprudence examination must be completed in order to renew the license. Licensees shall be required to complete the jurisprudence examination for only one renewal period.

(v) Proof of successfully completing the jurisprudence examination must be submitted to the board at the time of renewal.

§741.162. Requirements for Continuing Professional Education.

(a) - (m) (No change.)

(n) Completion of the jurisprudence examination shall count as one hour of the continuing education requirement for professional ethics, as referenced in subsection (c) of this section per renewal period.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901253

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 458-7111 x6972



22 TAC §741.163

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board of Examiners for Speech-Language Pathology and Audiology or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The repeal affects Texas Occupations Code, Chapter 401.

§741.163. Inactive Status.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901254

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 458-7111 x6972



22 TAC §741.163

STATUTORY AUTHORITY

The new rule is proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The new rule affects Texas Occupations Code, Chapter 401.

§741.163. Inactive Status.

(a) A licensee may place his or her license on inactive status by submitting a written request prior to the expiration of the license

along with the required inactive fee. Inactive status periods shall be granted only to persons whose licenses are current.

(b) An inactive status period shall begin on the first day of the month following payment of an inactive status fee.

(c) A person may not practice as a speech-language pathologist, audiologist, intern, or assistant during the inactive status period.

(d) A licensed audiologist or intern in audiology may not fit and dispense hearing instruments if the audiology or the intern in audiology license has been placed on inactive status.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901255

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER O. TELEHEALTH

22 TAC §§741.211 - 741.215

STATUTORY AUTHORITY

The new rules are proposed under Texas Occupations Code, §401.202, which provides the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Texas Occupations Code, Chapter 401.

The new rules affect Texas Occupations Code, Chapter 401.

§741.211. Definitions.

The following words and terms when used in this chapter shall have the indicated meanings unless the context clearly indicates otherwise.

(1) Board--The Texas State Board of Examiners for Speech-Language Pathology and Audiology.

(2) Client--A consumer of telehealth services.

(3) Consultant--Any professional who collaborates with a provider of telehealth services to provide services to clients.

(4) Provider--A currently licensed speech-language pathologist or a currently licensed audiologist who provides telehealth services.

(5) Service delivery model--The method of providing telehealth services.

(6) Site--The client location for providing telehealth services.

(7) Stored clinical data--Video clips, sound/audio files, photo images, electronic records, and written records that may be available for transmission via telehealth communications.

(8) Telehealth--The use of telecommunications and information technologies for the exchange of information from one site to another for the provision of speech-language pathology or audiology

services to an individual from a provider through hardwire or internet connection.

(9) Telepractice--The practice of telehealth.

§741.212. Service Delivery Models.

(a) Telehealth may be delivered in a variety of ways, as set out in this section.

(b) Store-and-forward model/electronic transmission is an asynchronous electronic transmission of stored clinical data from one location to another usually by the internet via email and fax.

(c) Clinician interactive model is a synchronous, real time interaction between the provider and client or consultant that may occur via audio and video transmission over telecommunication links such as telephone, internet, fax, or other methods for distance communication, including:

(1) videoconferencing;

(2) remote control software applications;

(3) computer applications;

(4) fax transmittal and receipt;

(5) email correspondence including attachments; or

(6) video and audio transmission through regular mail service delivery and express delivery services.

(d) Self-monitoring/testing model refers to when the client or consultant receiving the services provides data to the provider without a facilitator present at the site of the client or consultant.

(e) Live versus stored data refers to the actual data transmitted during the telepractice. Both live, real-time and stored clinical data may be included during the telepractice.

§741.213. Guidelines for the Use of Telehealth.

(a) A provider shall comply with the board's Code of Ethics and Scope of Practice requirements when providing telehealth services.

(b) The scope, nature, and quality of services provided via telepractice are the same as that provided during in-person sessions by the provider.

(c) The quality of electronic transmissions shall be appropriate for the provision of telehealth services as if those services were provided in person.

(d) A provider shall only utilize technology with which they are competent to use as part of their telepractice services.

(e) Equipment used for telehealth services shall be maintained in appropriate operational status to provide appropriate quality of services.

(f) Equipment used at the site at which the client or consultant is present shall be in appropriate working condition and deemed appropriate by the provider.

(g) The initial contact between the licensee and client shall be at the same physical location to determine the advisability of telehealth services.

(h) A provider shall be aware of the client or consultant level of comfort with the technology being used as part of the telehealth services and adjust their practice to maximize the client or consultant level of comfort.

(i) When a provider collaborates with a consultant from another state in which the telepractice services are eventually delivered,

the consultant in the state in which the client lives shall be the primary care provider for the client.

(j) As pertaining to liability and malpractice issues, a provider shall be held to the same standards of practice as if the telepractice services were provided in person.

(k) A provider shall be sensitive to cultural and linguistic variables that affect the identification, assessment, treatment, and management in the clients.

(l) Upon request, the provider shall submit to the board data which evaluates effectiveness of services provided via telehealth including but not limited to outcomes measures.

(m) A treating provider or health professional who provides or facilitates the use of telehealth services shall ensure that the confidentiality of the client's information is maintained as required by applicable laws.

(n) A provider shall comply with any federal or state law relating to the security and confidentiality of the information maintained or received.

§741.214. Limitations of Telehealth Services.

(a) A provider of telehealth services shall inform the client and consultants as to the limitations of providing these services, including the following:

(1) the inability to have direct, physical contact with the client is a primary difference between telehealth and direct in-person service delivery;

(2) the quality of transmitted data may affect the quality of services provided by the provider; and

(3) that changes in the environment and test conditions could be impossible to make during delivery of telehealth services.

(b) Telehealth services may not be provided by correspondence only.

§741.215. Requirements of Personnel Providing Telehealth Services.

(a) A provider of telehealth services who practices in the state shall be licensed by the board.

(b) A provider of telehealth services shall be competent in both the type of services provided and the methodology and equipment used to provide the service.

(c) A provider of telehealth services who resides out of state and who provides services to Texas residents shall be licensed by the board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 30, 2009.

TRD-200901256

Kerry Ormson, Ed.D., Au.D.

Presiding Officer

State Board of Examiners for Speech-Language Pathology and Audiology

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 458-7111 x6972



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 157. EMERGENCY MEDICAL CARE

SUBCHAPTER G. EMERGENCY MEDICAL SERVICES TRAUMA SYSTEMS

25 TAC §157.133

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes new §157.133, concerning the requirements for stroke facility designation.

BACKGROUND AND PURPOSE

The proposed rule is necessary to comply with Senate Bill 330, 79th Legislature, 2005, Regular Session, that amended Health and Safety Code, §773.204 and §773.205, which require the Governor's Emergency Medical Services (EMS) and Trauma Advisory Council (GETAC), with the assistance of its Stroke Committee and in collaboration with the Texas Council on Cardiovascular Disease and Stroke (TCCDS), to develop stroke facility criteria and a statewide stroke emergency transport plan; and Acts, 2003, 78th Legislature, Regular Session, Chapter 198 (House Bill 2292), §2.42, added Health and Safety Code, §12.0111, which requires the department to charge a fee sufficient to cover the cost of administering and enforcing the stroke designation program.

SECTION-BY-SECTION SUMMARY

The proposed rule describes how hospitals will qualify for stroke facility designation after they have been accredited by the Joint Commission and how the 22 regional advisory councils may develop regional stroke system plans to include stroke emergency transport plans that must include: (1) training requirements on stroke recognition and treatment, including emergency screening procedures; (2) a list of appropriate early treatments to stabilize patients; (3) protocols for rapid transport to a stroke facility when rapid transport is appropriate and it is safe to bypass another health care facility; (4) plans for coordination with statewide agencies or committees on programs for stroke prevention and community education regarding stroke and stroke emergency transport; and (5) a \$100 nonrefundable application fee for each hospital seeking stroke designation.

FISCAL NOTE

Renee Clack, Section Director, Health Care Quality Section, has determined that for each year of the first five years that the section will be in effect, there may be an increase in revenue to state government. Since stroke designation is a voluntary process, it cannot be determined which year will have an increase in revenue because it depends upon when the stroke facilities will seek the stroke facility designation. The department estimates that 25 stroke facilities will seek stroke facility designation lasting for a period of two years. The 25 facilities will have to pay a \$100 fee to redesignate every two years which will be an increase to the state. Existing resources within the department will be utilized to process and review applications, provide technical assistance, and recommend designation to the Commissioner.

There will be no fiscal implication to local governments as a result of enforcing or administering the section as proposed unless a local government operates a healthcare facility and voluntar-

ily chooses to seek stroke designation. In that case, the local government will be required to comply with the rule and submit a \$100 nonrefundable application fee. Once the rule is adopted, a local government that voluntarily seeks stroke facility designation will incur costs to become accredited by the Joint Commission. The cost associated with these proposed requirements, other than the \$100 application fee, cannot be determined since the local market in which the local government resides will determine the fiscal impact on each healthcare facility.

MICRO-BUSINESS AND SMALL BUSINESS ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

Ms. Clack has also determined that the number of healthcare facilities meeting the definition of a micro-business would likely be very low, but there could be a number of healthcare facilities meeting the definition of a small business. There will be no fiscal impact on micro-businesses and small businesses or persons unless they operate a healthcare facility and voluntarily choose to seek stroke designation. In that case, the micro-businesses and small businesses or persons will be required to comply with the rule and submit a \$100 application fee. Once the rule is adopted, a micro-business or small business that seeks stroke facility designation will incur costs to become accredited by the Joint Commission. The cost associated with the proposed requirements, other than the \$100 application fee, cannot be determined since the local market in which the small businesses or micro-businesses resides will determine the fiscal impact on each healthcare facility. Since the seeking of a stroke facility designation from the department would be a voluntary endeavor and not a requirement, there would be no fiscal impact to healthcare facilities not seeking designation and, therefore, a regulatory flexibility analysis is not required. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Clack has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is to construct a statewide emergency treatment system so that stroke victims may be rapidly identified and then transported to and treated in appropriate stroke treatment facilities. The proposed rule will allow for the development of an effective and resource-efficient plan to reduce the morbidity, mortality, and economic burden of cardiovascular disease and stroke in the state.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed new rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and,

therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Jane Guerrero, Office of EMS/Trauma Systems Coordination, Health Care Quality Section, Division of Regulatory Services, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6700, or by e-mail to jane.guerrero@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed new rule is authorized by Health and Safety Code, Chapter 773, Emergency Medical Services, which provides the department with the authority to adopt rules to implement the Emergency Medical Services Act; Health and Safety Code, §12.0111, which requires the department to charge a fee sufficient to cover the cost of administering and enforcing the stroke designation program; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed new rule affects Health and Safety Code, Chapters 12, 773, and 1001; and Government Code, Chapter 531.

§157.133. Requirements for Stroke Facility Designation.

(a) The Office of Emergency Medical Services (EMS)/Trauma Systems Coordination (office) shall recommend to the Commissioner of the department (commissioner) the designation of an applicant/healthcare facility (facility) as a stroke facility at the level(s) for each location of a facility the office deems appropriate.

(1) Comprehensive Stroke Facility designation, Level I--The facility, including a free-standing children's facility, meets the current Brain Attack Coalition essential criteria for an accredited comprehensive stroke center; actively participates on the appropriate Regional Advisory Council (RAC); and submits data to the department as requested.

(2) Primary Stroke Facility designation, Level II--The facility, including a free-standing children's facility, meets the current Brain Attack Coalition essential criteria for an accredited primary stroke center; actively participates on the appropriate RAC; and submits data to the department as requested.

(3) Support Stroke Facility designation, Level III--The facility, including a free-standing children's facility, meets essential criteria (in the following Figure) for an accredited support stroke facility; actively participates on the appropriate RAC; and submits data to the department as requested.

Figure: 25 TAC §157.133(a)(3)

(b) A healthcare facility is defined under these rules as a single location where inpatients receive hospital services or each location if there are multiple buildings where inpatients receive hospital services

and are covered under a single hospital license. Each location shall be considered separately for designation.

(c) The designation process shall consist of three phases.

(1) First phase. The application phase begins with submitting to the office a timely and sufficient application for designation as a stroke facility and ends when the survey report is received by the office.

(2) Second phase. The review phase begins with the office's review of the survey report and ends with its recommendation to the commissioner whether or not to designate the facility.

(3) Third phase. The final phase begins with the commissioner reviewing the recommendation and ends with his/her final decision.

(d) Designation of a healthcare facility as a stroke facility is valid for two years.

(e) It shall be necessary to repeat the stroke designation process as described in this section prior to expiration of a facility's designation or the designation expires.

(f) A timely and sufficient application for a facility seeking initial designation shall include:

(1) the department's current "Complete Application" for the requested level of stroke facility designation, with all fields correctly and legibly filled-in and all requested documents attached, hand-delivered or sent by postal services to the office;

(2) full payment of the non-refundable \$100 designation fee enclosed with the submitted "Complete Application" form;

(3) any subsequent documents submitted by the date requested by the office;

(4) a stroke designation survey completed within one year of the date of the receipt of the application by the office; and

(5) a complete survey report, including patient care reviews, that is within 180 days of the date of the survey and is hand-delivered or sent by postal services to the office.

(g) If a healthcare facility seeking initial designation fails to meet the requirements in subsection (f)(1) - (5) of this section, the application shall be denied.

(h) A timely and sufficient application for a stroke facility seeking redesignation shall include:

(1) the department's current "Complete Application" form for the requested level of stroke facility designation, with all fields correctly and legibly filled-in and all requested documents attached, hand-delivered or sent by postal services to the office one year or greater before the designation expiration date;

(2) full payment of the non-refundable \$100 designation fee enclosed with the submitted "Complete Application" form;

(3) any subsequent documents submitted by the date requested by the office; and

(4) a complete survey report, including patient care reviews, that is within 180 days of the date of the survey and is hand-delivered or sent by postal services to the office no less than 60 days prior to the designation expiration date.

(i) If a healthcare facility seeking redesignation fails to meet the requirements outlined in subsection (h)(1) - (4) of this section, the original designation will expire on its expiration date.

(j) The office's analysis of the submitted "Complete Application" form may result in recommendations for corrective action when deficiencies are noted and shall also include a review of:

(1) evidence of current participation in RAC/regional system planning; and

(2) the completeness and appropriateness of the application materials submitted, including the submission of a non-refundable application fee of \$100.

(k) Facilities seeking Comprehensive, Primary or Support stroke facility designation shall request a survey through the Joint Commission's stroke certification program or a comparable organization approved by the department.

(l) A designated stroke facility shall:

(1) comply with the provisions within this rule, all current state and regional stroke system standards as described in this chapter, and all policies, protocols, and procedures as set forth in the state stroke system plan; and

(2) continue to provide the resources, personnel, equipment, and response as required by its designation level.

(m) Designated stroke facilities failing to meet and/or maintain critical essential criteria outlined in this subsection, shall provide notification about such failings within five days to the office, its RAC, plus other affected RACs, EMS providers, and the healthcare facilities from which it receives and to which it transfers stroke patients:

(1) neurosurgery capabilities (Level I);

(2) neurointerventional surgery capabilities (Level I);

(3) neurology capabilities (Level I, II);

(4) anesthesiology (Levels I);

(5) emergency physicians (all levels);

(6) stroke medical director (all levels);

(7) stroke nurse coordinator/program manager (all levels);
and

(8) stroke registry (all levels).

(n) If the facility chooses to apply for a lower level of stroke designation, it may do so at any time; however, it may be necessary to repeat the designation process. There shall be a paper review by the office to determine if and when a full survey shall be required.

(o) If the facility chooses to relinquish or change its stroke designation, it shall provide at least 30 days notice to the RAC and the office.

(p) A healthcare facility may not use the terms "stroke facility," "stroke hospital," "stroke center," "comprehensive stroke center," "primary stroke center," "support stroke facility" or similar terminology in its signs or advertisements or in the printed materials and information it provides to the public unless the healthcare facility is currently designated as that level of stroke facility according to the process described in this section.

(q) The office may review, inspect, evaluate, and audit all stroke patient records, stroke performance improvement, committee minutes, and other documents relevant to stroke care in any designated stroke facility or applicant/healthcare facility at any time to verify compliance with the statute and this rule, including the designation criteria.

(r) If a designated stroke facility fails to meet and/or maintain standards, outlined herein, or if it violates the department hospital licensing regulations, the department may deny, suspend or revoke the designation.

(s) A RAC should develop a stroke system plan based on standard guidelines for comprehensive system development. The stroke system plan is subject to review and approval by the department.

(t) The department may review the RAC's stroke system plan to assure that:

(1) all counties within the trauma service area (TSA) have been included unless a specific county, or portion thereof, has been aligned within an adjacent system;

(2) all health care entities and interested specialty centers have been given an opportunity to participate in the planning process; and

(3) the following components have been addressed:

(A) stroke prevention;

(B) access to the system;

(C) communications;

(D) medical oversight;

(E) pre-hospital triage criteria;

(F) diversion policies;

(G) bypass protocols--guidelines for the emergency transport of patients, who are eligible within the timeframe for United States Food and Drug Administration (FDA) approved stroke care therapies, to the highest state designated stroke center;

(H) regional medical control;

(I) regional stroke treatment guidelines:

(i) guidelines consistent with current standards shall be developed, implemented, and evaluated;

(ii) individual agencies and medical directors may, and are encouraged, to exceed the minimum standards;

(iii) stroke patients will be cared for by health professionals with documented education and skill in the assessment and care of stroke throughout their pre-hospital and hospital course;

(iv) stroke patients will have their medical care, as documented by pre-hospital run forms and hospital charts, reviewed by the individual entity's medical director for appropriateness and quality of care; and

(v) stroke patients will have deviations from standard of care addressed through a documented stroke performance improvement process.

(J) facility triage criteria;

(K) inter-hospital transfers;

(L) planning for the designation of stroke facilities, including the identification of the comprehensive, primary, and support stroke facilities; and

(M) a performance improvement program that evaluates processes and outcomes from a system perspective.

(u) Department approval of the completed stroke system plan may qualify health care entities participating in the system to receive state funding for stroke care if funding is available.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 24, 2009.

TRD-200901168

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 458-7111 x6972



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

28 TAC §7.18

The Texas Department of Insurance (Department) proposes amendments to §7.18, concerning Statements of Statutory Accounting Principles (SSAPs). SSAPs provide guidance to insurers and health maintenance organizations (HMOs), including accountants employed or retained by these entities, on how to properly record business transactions for the purpose of accurate statutory reporting. These insurers and HMOs are referred to collectively as "carriers" in this proposal. SSAPs provide a nationwide standard method of accounting, which most carriers are required to use for statutory financial reporting guidance. Therefore, SSAPs provide for a more consistent reporting of financial information from carriers. However, SSAPs do not preempt individual state legislative or regulatory authority. SSAPs are adopted by the National Association of Insurance Commissioners (NAIC) through its maintenance of statutory accounting principles process, which involves the development and proposal of new SSAPs, holding a public hearing, providing the opportunity for public comment, and adoption by the NAIC. The Accounting Practices and Procedures Manual (Manual), published by the NAIC, is a comprehensive guide to statutory accounting principles and includes the SSAPs that have been adopted by the NAIC. SSAPs provide the source of statutory accounting principles for the Department when analyzing financial reports and for conducting statutory examinations and rehabilitation of carriers licensed in Texas, except where otherwise provided by law.

The proposed amendments are necessary to adopt by reference the March 2008 version of the Manual, as well as substantive and non-substantive updates to this version of the Manual issued by the NAIC in calendar-year 2008. Except for new Actuarial Guideline XLIII (AG 43), the March 2008 version of the Manual and the updates to it must be used to prepare all financial statements filed with the Department for reporting periods beginning on or after January 1, 2009. New AG 43 is effective December 31, 2009, and will be used to prepare all financial statements filed with the Department after January 1, 2010, beginning with the

2009 annual statements for the reporting period as of December 31, 2009.

An amendment is proposed to §7.18(a) to add the phrase "with the exceptions and additions set forth in subsections (c) and (d) of this section." This amendment is necessary to clarify that the March 2008 *Accounting Practices and Procedures Manual*, including the exceptions and additions specified in §7.18(c) and (d), will be utilized as the guideline for statutory accounting principles in Texas to the extent the Manual does not conflict with provisions of the Insurance Code or rules of the Department. Also, an amendment is proposed to §7.18(a) to add the internal reference "of this subsection" to clarify that the paragraphs (1) - (3) that are specified as preempting any contrary provisions in the Manual refer to paragraphs (1) - (3) of §7.18(a). Also, amendments are proposed to §7.18(a) to correct references to the titles of Department rules relating to Memorandum Regulation; Policy Reserves; and Claims Reserves. Corrections to punctuation have also been made in §7.18(a) for purposes of clarity and readability.

Under the proposed amendments to §7.18(b), the Commissioner adopts by reference the March 2008 version of the Manual, with the exceptions and additions set forth in subsections (c) and (d). For purposes of clarity and accuracy, an amendment is proposed to §7.18(b) to replace the word "examining" with the word "analyzing." This amendment is necessary to clarify that the Manual will serve as the source of accounting principles for the Department when analyzing financial reports and for conducting statutory examinations and rehabilitations of insurers and health maintenance organizations licensed in Texas, except where otherwise provided by law. Amendments are also proposed to §7.18(b) to provide that the March 2008 version of the Manual: (i) shall be applied to examinations conducted as of January 1, 2009, and thereafter; and (ii) shall be used to prepare all financial statements filed with the Department for reporting periods beginning on or after January 1, 2009. These amendments are necessary to clarify the purpose and application of the March 2008 version of the Manual.

Under the proposed amendments to §7.18(c), the Commissioner adopts the exceptions and additions to the Manual that are specified in §7.18(c)(1) and (2). The proposed amendments provide that these exceptions and additions: (i) shall be applied to examinations conducted as of January 1, 2009 and thereafter, and (ii) also shall be used to prepare all financial statements filed with the Department for reporting periods beginning on or after January 1, 2009, except as provided in proposed new §7.18(c)(1)(C) concerning AG 43. Under the amendments to §7.18(c)(1), the following SSAPs are proposed to be adopted by reference: (i) SSAP No. 91R, which provides guidance on subsequent fair value measurement of servicing assets and servicing liabilities; (ii) SSAP No. 98, which establishes statutory accounting principles for impairment analysis and subsequent valuation of loan-backed and structured securities and amends SSAP No. 43, paragraphs 14 through 16; and (iii) SSAP No. 99, which provides statutory accounting guidance subsequent to an other-than-temporary impairment; SSAP No. 99 supersedes SSAP No. 26, paragraph 9; SSAP No. 32, paragraphs 22 - 24; and SSAP No. 43, paragraph 16; SSAP No. 99 also modifies SSAP No. 34, paragraph 3. These three SSAPs must be used to prepare all financial statements filed with the Department for reporting periods beginning on or after January 1, 2009. Newly designated §7.18(c)(1)(A) (§7.18(c)(1) in the existing rules) proposes to delete all references to SSAP No. 97, because SSAP No. 97 is included in the March 2008

version of the Manual. Under newly designated §7.18(c)(1)(B) (§7.18(c)(2) in existing rules), non-substantive modifications are proposed for adoption by reference to SSAP Nos. 5, 15, 21, 22, 26, 30, 32, 40, 41, 43, 48, 52, 54, 55, 63, 65, 68, 86, and 91, and to the Preamble section of the Manual. These nonsubstantive modifications, which were issued by the NAIC in calendar-year 2008, clarify language or change disclosures, appendices, or other material referenced in SSAPs already included in the March 2008 version of the Manual. Newly designated §7.18(c)(1)(B) (§7.18(c)(2) in existing rules) also proposes to delete all references to the non-substantive modifications to SSAP Nos. 1, 10, 22, 26, 55, 56, 61, 62, 72, and 80 because the March 2008 version of the Manual includes all of these nonsubstantive modifications. Existing §7.18(c)(2)(A) - (N) are proposed to be redesignated as §7.18(c)(1)(B)(i) - (xiv) and new clauses (xv) - (xvii) are proposed to be added to §7.18(c)(1)(B). Proposed new §7.18(c)(1)(C) proposes the adoption by reference of three new actuarial guidelines and revisions to two existing actuarial guidelines developed by the NAIC in calendar-year 2008. Under new §7.18(c)(1)(C), the following new guidelines are proposed for adoption: (i) AG 43, which provides reserve requirements for variable annuities and similar products with or without guaranteed minimum death benefits or guaranteed minimum living benefits and replaces AG 34 and AG 39, effective December 31, 2009; (ii) Actuarial Guideline XLIV (AG 44), which provides reserve requirements and guidance for group term life waiver of premium disability reserves, effective January 1, 2009; and (iii) Actuarial Guideline XLV (AG 45), which provides nonforfeiture requirements and guidance for life insurance having certain intermediate cash benefits such as return of premium benefits, effective January 1, 2009. New §7.18(c)(1)(C) also proposes for adoption by reference revisions to Actuarial Guideline XXXIV (AG 34) and Actuarial Guideline XXXIX (AG 39). Both of these guidelines address the replacement and transition from applying AG 34 and AG 39 to applying new AG 43. Existing §7.18(c)(3) - (7) are proposed to be re-designated as §7.18(c)(2)(A) - (E) without changes to the existing rules.

FISCAL NOTE. Danny Saenz, Senior Associate Commissioner, Financial Program, has determined that for the first five years the amended section is in effect, there will be no fiscal implications for state or local government as a result of this amendment, and there will be no effect on local employment or the local economy.

PUBLIC BENEFIT/COST NOTE. Mr. Saenz has also determined that for each year of the first five years the amended section is in effect, the public benefit will be the more efficient financial solvency regulation of insurance in general and a decrease in costs to carriers that are required to comply with accounting requirements in multiple states. In particular, the Department will be able to more efficiently and effectively utilize existing resources in the analysis and examination of the financial condition of carriers to better ensure financial solvency. The adoption of the updates to the March 2008 version of the Manual will result in a more consistent regulatory environment and will provide a central source for accounting guidance. The Department does not anticipate that any of the proposed amendments will result in additional costs to those costs that are required of carriers, regardless of size, under the existing rules except new AG 43, relating to reserve requirements for variable annuities and similar products with or without guaranteed minimum death benefits or guaranteed minimum living benefits.

§7.18(c)(1)(A). The proposed amendment to newly designated §7.18(c)(1)(A) (§7.18(c)(1) in the existing rules) adopts by refer-

ence SSAP No. 91R, which incorporates substantive and non-substantive revisions to SSAP No. 91, including guidance on subsequent fair value measurement of servicing assets and servicing liabilities. Proposed amendments to §7.18(c)(1)(A) also adopt by reference SSAP No. 98, which establishes statutory accounting principles for impairment analysis and subsequent valuation of loan-backed and structured securities, and SSAP No. 99, which provides statutory accounting guidance subsequent to an other-than-temporary impairment. None of these substantive and nonsubstantive revisions will result in additional costs to those costs that are required of carriers, regardless of size, under the existing rules.

§7.18(c)(1)(B). The proposed amendments to newly designated §7.18(c)(1)(B) (§7.18(c)(2) in existing rules) adopts by reference non-substantive modifications to the Preamble portion of the Manual, as well as to SSAP Nos. 5, 15, 21, 22, 26, 30, 32, 40, 41, 43, 48, 52, 54, 55, 63, 65, 68, 86, and 91. The proposed non-substantive modifications clarify language or update reference materials, including disclosures and appendices, to SSAPs already included in the March 2008 version of the Manual. None of these non-substantive modifications will result in additional costs to those costs that are required of carriers, regardless of size, under the existing rules.

§7.18(c)(1)(C). Proposed new §7.18(c)(1)(C) adopts by reference new AG 43, new AG 44, and new AG 45, and revised AG 34 and AG 39. New AG 43 specifies reserve requirements for variable annuities and similar products with or without guaranteed minimum death benefits or guaranteed minimum living benefits and replaces AG 34 and AG 39, effective December 31, 2009. New AG 44 specifies reserve requirements and guidance for group term life waiver of premium disability reserves, effective January 1, 2009. New AG 45 specifies nonforfeiture requirements and guidance for life insurance having certain intermediate cash benefits such as return of premium benefits, effective January 1, 2009. Revised AG 34 and 39 address the replacement and transition from applying AG 34 and AG 39 to applying AG 43. New AG 44 and AG 45 and revised AG 34 and AG 39 will not result in additional costs to those costs that are required of carriers, regardless of size, under the existing rules. New AG 43, however, will result in additional costs.

Because new AG 43 is not effective until December 31, 2009, carriers required to comply with the new actuarial guideline will not begin to incur any additional costs until approximately September or October of calendar-year 2009. Carriers required to comply with new AG 43 also will incur costs during calendar years subsequent to calendar-year 2009. These costs will vary based on the size of the carriers and the amount and complexity of the business subject to AG 43. The Department expects less than 10 large domestic carriers and no small or micro business carriers in Texas to have business subject to AG 43. The Department does not expect small or micro business carriers to write business subject to AG 43 because the sophistication and complexity required to write this type of business is too cost-prohibitive for small or micro businesses. The Department, however, expects a number of large foreign carriers to have business subject to AG 43. Business subject to AG 43 is primarily variable annuity business, but also business that contains guarantees similar to those found in variable annuity business such as guaranteed minimum death benefits or guaranteed minimum living benefits. Reserves computed based upon the requirements in AG 43 are considered more appropriate than reserves produced by AG 34 and AG 39. The less than 10 large domestic carriers expected to be affected by AG 43 will

incur ongoing annual actuarial personnel and computer personnel costs to perform the AG 43 reserve computations. The Department estimates that actuarial personnel costs will range from \$25 per hour to approximately \$300 per hour. Computer personnel costs are estimated to range from \$25 per hour to approximately \$150 per hour. The annual costs for each of these few large domestic carriers in Texas are estimated to range from one-half of one percent to one percent of the annual costs of administering each of the carrier's business affected by the AG 43 requirements. The Department anticipates that such annual costs per carrier are believed to be similar for each foreign carrier holding a certificate of authority to do business in Texas with business subject to the AG 43 requirements. The Department's estimations are based upon discussions with industry representatives concerning the substantially similar costs for these carriers to comply with the 2008 life risk-based capital C-3 Phase II instructions required in §7.402(d)(1). Discussions with industry representatives involved several of the large domestic carriers in Texas estimated to have over half of the domestic carrier variable annuity business in Texas as measured on the basis of accumulation value for this business.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accordance with the Government Code §2006.002, the Department has determined that the proposed amendments will not result in any additional costs to those costs that are required of small and micro business carriers under the existing rules for the reasons specified in the Public Benefit/Cost Note part of this proposal. Nevertheless, the rule exempts certain carriers that have historically accounted for their business on a cash basis and have historically posed relatively insubstantial insolvency-related risk to consumers, other carriers, and the state's general economic welfare from compliance with the Manual. Section 7.18(d) exempts any farm mutual insurance company, statewide mutual assessment company, local mutual aid association, or mutual burial association with less than \$6 million in annual direct written premiums from compliance with the Manual. Because of the types or methods of operations of these types of carriers, they are more likely to be small or micro business carriers. The Department does not anticipate that any small or micro business carriers will have business subject to the AG 43 requirements in proposed new §7.18(c)(1)(C); the costs to comply with new AG 43 are detailed in the Public Benefit/Cost Note part of this proposal. Therefore, no small or micro businesses will be required to perform reserve computations pursuant to AG 43. The AG 43 reserve computations relate to certain unique types of business that, based upon information obtained from the industry, is generally written only by large carriers.

Under the Government Code §2006.002(c), before adopting a rule that may have an adverse economic effect on small or micro businesses, an agency is required to prepare in addition to an economic impact statement a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. The Department has determined that: (i) the routine costs to comply with this proposal, i.e., compliance with the Manual in financial filings, will not have an adverse economic effect on small or micro business carriers and (ii) new AG 43, which will result in additional costs for some carriers, but is not applicable to business written by small or micro business carriers, and, thus, will not have an adverse economic effect on small or micro business carriers. Therefore, the Department is not required to consider alternative methods

of achieving the purpose of these requirements in the proposed rule as required by the Government Code §2006.002(c).

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on May 11, 2009. All comments should be submitted to Gene C. Jarmon, General Counsel and Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted simultaneously to Danny Saenz, Senior Associate Commissioner, Financial Program, Texas Department of Insurance, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing on the proposal should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The amendments are proposed under the Insurance Code Chapters 32, 36, 401, 404, 421, 425, 426, 441, 802, 823, 841, 843, 861, and 862, and §36.001. Sections 401.051 and 401.056 mandate that the Department examine the financial condition of each carrier organized under the laws of Texas and authorized to transact the business of insurance in Texas and adopt by rule procedures for the filing and adoption of examination reports. Section 404.005(a)(2) authorizes the Commissioner to establish standards for evaluating the financial condition of an insurer. Section 421.001(c) requires the Commissioner to adopt each current formula recommended by the NAIC for establishing reserves for each line of insurance. Section 425.162 authorizes the Commissioner to adopt rules, minimum standards, or limitations that are fair and reasonable as appropriate to supplement and implement the Insurance Code, Chapter 425, Subchapter C. Section 426.002 provides that reserves required by §426.001 must be computed in accordance with any rules adopted by the Commissioner to adequately protect insureds, secure the solvency of the workers' compensation insurance company, and prevent unreasonably large reserves. Section 441.005 authorizes the Commissioner to adopt reasonable rules as necessary to implement and supplement Chapter 441 of the Insurance Code (Supervision and Conservatorship). Section 32.041 requires the Department to furnish to the companies the required financial statement forms. Section 802.001 authorizes the Commissioner, as necessary, to obtain an accurate indication of the company's condition and method of transacting business, to change the form of any annual statement required to be filed by any kind of insurance company. Section 823.012 authorizes the Commissioner to issue rules and orders necessary to implement the provisions of Chapter 823 of the Insurance Code (Insurance Holding Company Systems). Section 843.151 authorizes the Commissioner to promulgate rules as are necessary to carry out the provisions of Chapter 843 of the Insurance Code (Health Maintenance Organizations). Section 843.155 requires HMOs to file annual reports with the Commissioner, which include a financial statement of the HMO, certified by an independent public accountant. Sections 841.004(b), 861.255(b) and 862.001(c) authorize the Commissioner to adopt rules defining electronic machines and systems, office equipment, furni-

ture, machines and labor saving devices, and the maximum period for which each such class may be amortized. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code, Chapters 32, 401, 404, 421, 425, 426, 441, 802, 823, 841, 843, 861, and 862.

§7.18. *National Association of Insurance Commissioners Accounting Practices and Procedures Manual.*

(a) The purpose of this section is to adopt statutory accounting principles, which will provide insurers and health maintenance organizations, including accountants employed or retained by these entities, guidance as how to properly record business transactions for the purpose of accurate statutory reporting. The March 2008 [2007] version of the Accounting Practices and Procedures Manual (Manual) published by the National Association of Insurance Commissioners (NAIC), with the exceptions and additions set forth in subsections (c) and (d) of this section, will be utilized as the guideline for statutory accounting principles in Texas to the extent the Manual does not conflict with provisions of the Insurance Code or rules of the department. The Commissioner reserves all authority and discretion to resolve any accounting issues in Texas. When making a determination on the proper accounting treatment for an insurance or health plan transaction, the Commissioner shall refer to the sources in paragraphs (1) - (6) of this subsection in the respective order of priority listed. The sources in paragraphs (1) - (3) of this subsection preempt any contrary provisions in the Manual. The department rules that preempt any contrary provisions in the Manual, include, but are not limited to: §§3.1501 - 3.1505, 3.1601 - 3.1608, 3.4505(f), 3.6101, 3.6102, 3.7001 - 3.7009, 3.9101 - 3.9106, 3.9401 - 3.9404, 7.7, 7.85 and 11.803 of this title (relating to Annuity Mortality Tables_[-] Actuarial Opinion and Memorandum Regulation_[-] [Annuities_[-] General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves; Policy Reserves; Claims Reserves_[-] Minimum Reserve Standards for Individual and Group Accident and Health Insurance_[-] 2001 CSO Mortality Table_[-] Preferred Mortality Tables, Subordinated Indebtedness, Surplus Debentures, Surplus Notes, Premium Income Notes, Bonds, or Debentures, and Other Contingent Evincences of Indebtedness_[-] Audited Financial Reports_[-] and Investments, Loans, and Other Assets).

(1) - (6) (No change.)

(b) The Commissioner adopts by reference the March 2008 [2007] version of the Manual, with the exceptions and additions set forth in subsections (c) and (d) of this section, as the source of accounting principles for the department when analyzing [examining] financial reports and for conducting statutory examinations and rehabilitations of insurers and health maintenance organizations licensed in Texas, except where otherwise provided by law. This adoption by reference shall be applied to examinations conducted as of January 1, 2009 [2008] and thereafter, and also shall be used to prepare all financial statements filed with the department for reporting periods beginning on or after January 1, 2009 [2008].

(c) The Commissioner adopts the [following] exceptions and additions to the Manual specified in paragraphs (1) and (2) of this subsection. Except as provided in paragraph (1)(C) of this subsection concerning Actuarial Guideline 43, these exceptions and additions shall be applied to examinations conducted as of January 1, 2009 and thereafter, and also shall be used to prepare all financial statements filed with the department for reporting periods beginning on or after January 1, 2009._[-]

(1) In addition to the statements of statutory accounting principles in the Manual, the following additions and exceptions are adopted by reference:

(A) Statement of Statutory Accounting Principles (SSAP) Nos. 91R, 98, and 99 [No. 97 regarding accounting for investments in subsidiary, controlled and affiliated entities], adopted by the NAIC in calendar year 2008 [on December 2, 2007] and effective January 1, 2009; [2008, are adopted by reference and shall be used to prepare all financial statements filed with the department for periods after January 1, 2008. This adoption of SSAP No. 97 effectively replaces SSAP No. 88.]

(B) [(2)] Nonsubstantive modifications to SSAP Nos. 5, 15, 21, 22, 26, 30, 32, 40, 41, 43, 48, 52, 54, 55, 63, 65, 68, 86, and 91 and to the Preamble section of the Manual [1, 10, 22, 26, 55, 56, 61, 62, 72, and 80] made by the NAIC in calendar year 2008 [2007], as follows:

(i) [(A)] Ref. No. 2008-25: FSP FAS 133-1 and FIN 45-4: Disclosures about Credit Derivatives and Certain Guarantees, Amendments of FAS 133 and FIN 45, and Clarification of the Effective Date of FAS 161 [2006-09: Accounting for the Gain or Loss on Sale of Real Estate Included in a Leaseback Transition];

(ii) [(B)] Ref. No. 2008-22: Disclosures for Funding Agreements Issued to a Federal Home Loan Bank [2007-16: Clarification of SSAP No. 26 for Reporting Investments in Commercial Paper];

(iii) [(C)] Ref. No. 2007-32: EITF 06-5: Accounting for Purchases of Life Insurance - Determining the Amount That Could be Realized in Accordance with FASB Technical Bulletin 85-4 and INT 07-05: Accounting for Deferred Compensation and Postretirement Benefit Aspects of Collateral Assignment Split-Dollar Life Insurance Arrangements [2007-17: Disclosure of Information about Capital Structure];

(iv) [(D)] Ref. No. 2008-05: FSP FAS 13-2: Accounting for a Change or Projected Change in the Timing of Cash Flows Relating to Income Taxes Generated by a Leveraged Lease Transaction [2005-15: Move INT 03-17 Disclosure to SSAP No. 55];

(v) [(E)] Ref. No. 2008-08: Methods Used to Determine and Report Fair Value of Securities [2006-11: Multi-Cendant Reinsurance Agreements];

(vi) [(F)] Ref. No. 2007-21: SOP 97-1: Accounting by Participating Mortgage Loan Borrowers [2006-24: SSAP No. 61: Ceding Commissions];

(vii) [(G)] Ref. No. 2008-12: Clarification of Accounting for Capital Notes Held as Investments [2006-27: Clarify SSAP No. 56, paragraph 20];

(viii) [(H)] Ref. No. 2002-20: Valuation and Reporting of Residential Interests [2006-28: Consider Inclusion of Model Regulation 815 into Appendix A - Excerpts of Model Laws];

(ix) [(I)] Ref. No. 2007-34: Use of Audited Tax Basis Financial Statements [2006-31: Disclosure Amendment to SSAP No. 10 for Protective Tax Deposits];

(x) [(J)] Ref. No. 2007-30: Remove Reference to Health Reserves Guidance Manual [2007-06: Quarterly Disclosure of Note 25];

(xi) [(K)] Ref. No. 2008-06: Clarification of SSAP No. 63 Regarding Intercompany Pooling Arrangements [2007-07: Additional Dividend Disclosure];

(xii) [(L)] Ref. No. 2008-03: Discounting of Loss Adjustment Expense Reserves [2007-13: Subsequent Events];

(xiii) [(M)] Ref. No. 2007-36: Goodwill in a Merged Subsidiary; [2007-15: Disclosures; and]

(xiv) [(N)] Ref. No. 2008-17: FSP FAS 142-3, Determination of the Useful Life of Intangible Assets; [2007-33: Subprime Mortgage Disclosure-]

(xv) Ref. No. 2008-14: Measurement of Sufficient Collateralization for Securities Lending Transactions;

(xvi) Ref. No. 2005-02: Amendment to the Permitted Practices Notice Requirement; and

(xvii) Ref. No. 2008-19: FAS 162, The Hierarchy of Generally Accepted Accounting Principles;

(C) Actuarial Guidelines 43, 44, and 45, and revised Actuarial Guidelines 34 and 39, issued by the NAIC in calendar year 2008. Actuarial Guideline 43 shall be applied to examinations conducted as of January 1, 2010 and thereafter, and also shall be used to prepare all financial statements filed with the department for reporting periods beginning on or after January 1, 2010.

(2) In addition, the following exceptions and additions are adopted:

(A) [(3)] Settlement requirements for intercompany transactions are subject to the accounting treatment in Statement of Statutory Accounting Principles (SSAP) No. 96, except that amounts owed to the reporting entity shall be settled by the due date in accordance with the written agreement and the requirements of §7.204 of this title (relating to Commissioner's Approval Required). Intercompany balances shall be settled within 90 days of the period for which the services are being billed; otherwise such balances shall be nonadmitted.

(B) [(4)] Retrospective premiums must be billed within 60 days of computation and audit premiums must be billed within 60 days of the completion of the audit in determining the beginning date from which the 90 day period is calculated to determine admissibility of uncollected premium balances under SSAP No. 6.

(C) [(5)] Electronic machines, constituting a data processing system or systems and operating systems software used in connection with the business of an insurance company acquired after December 31, 2000, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law and shall be amortized as provided by the Manual. All such property acquired prior to January 1, 2001, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law, and shall be amortized in full over a period not to exceed ten years.

(D) [(6)] Furniture, labor-saving devices, machines, and all other office equipment may be admitted as an asset as permitted by the Insurance Code §§841.004, 861.255, 862.001, and any other applicable law and, for such property acquired after December 31, 2000, depreciated in full over a period not to exceed five years. All such property acquired prior to January 1, 2001, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law, and shall be depreciated in full over a period not to exceed ten years.

(E) [(7)] All certificates of deposit, of any maturity, may be classified as cash and are subject to the accounting treatment contained in SSAP No. 2, notwithstanding the provisions of SSAP No. 26.

(d) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 27, 2009.

TRD-200901218

Brenda Caldwell

Assistant General Counsel

Texas Department of Insurance

Earliest possible date of adoption: May 10, 2009

For further information, please call: (512) 463-6327



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 102. HEALTH SPAS

The Office of the Secretary of State (Office) adopts changes to Chapter 102, concerning health spas. The Office adopts amendments to §§102.1, 102.10, 102.13, 102.15, 102.18, 102.20, 102.30, 102.32, 102.35, 102.45, and 102.50. Sections 102.11, 102.12 and 102.21 are adopted as new sections. The amendments and new sections are adopted without change to the text proposed in the February 13, 2009, issue of the *Texas Register* (34 TexReg 913).

These nonsubstantive amendments and new sections are adopted in order to reorganize the rules for health spas; to specify the location of forms on the Office's web site; to clarify the procedures for amending registrations; and to conform the rules to existing practices and procedures related to health spas.

Changes to Subchapter A include adding a definition of equivalent facilities to §102.1.

Changes to Subchapter B include amendments to §102.10 deleting language from that repeats statutory language; reorganizing and expanding the ownership provisions; clarifying the procedure for amending the registration or renewal of a health spa; providing that renewals may be submitted within 90 days of expiration; adding language about the nontransferability of a registration; explaining what may be considered a transfer in violation of the Act; and specifying the number and location of the form for application for registration. New §102.11 explains the procedure that registrants follow to amend registrations. New §102.12 explains the registration requirements for new owners of existing health spas. In addition, §102.13 was reworded to conform the language in the rules to the statutory language and to add a provision indicating that there is no fee assessed for amendment of a registration or renewal. Section 102.15 was revised to clarify that the statutory exemptions are exemptions from registration for activities and facilities that are not within the statutory definition of a health spa. Section 102.18 was reworded to clarify the procedures for requesting an exemption from the security requirements, the actions that the secretary of state will take in response to a request for exemption, the future obligations of an applicant following exemption, and to add language about the nontransferability of an exemption and what is considered a transfer.

Changes to Subchapter C include amending §102.20 to allow escrow accounts to be maintained at credit unions, to rearrange and clarify the contents of an escrow agreement and the circum-

stances under which the agreement is terminated and/or funds may be withdrawn. New §102.21 provides that a registrant shall submit a statement of escrow account to the secretary of state.

Changes to Subchapter D include amending §102.30 regarding acceptable forms of security to clarify that the secretary of state does not and has not accepted letters of credit as security since December 27, 2004, the effective date of the enactment of this rule. Amendments to §102.32 clarify that the total amount paid for all prepaid memberships determines the amount of the security. Amendments to §102.35 clarify the requirements regarding the posting of notice when a health spa closes and conform those requirements to current statutory requirements. The amendments also confirm that the secretary has no authority to accept claims after the statutory period, and to move language about the pro rata basis for claims exceeding the amount of security to follow the claims procedures and delete the duplicate language about pro rata distribution. Additional amendments delete the duplicate definition of closed since that term is defined in the statute as well as in §102.1. Amendments to §102.45 allow certificates of deposit provided as security to be maintained in credit unions and to incorporate the provisions related to assignment that are included in the prescribed assignment form.

Changes to Subchapter E include amending §102.50 to provide the web site location for forms.

The Office received no comments concerning the proposed changes to Chapter 102.

SUBCHAPTER A. DEFINITIONS

1 TAC §102.1

These rules are adopted under the authority of §702.051 and §702.052 of the Texas Occupations Code which provides that the secretary may adopt rules necessary to administer the chapter and determine the disposition of a security claim.

Chapter 702 of the Texas Occupations Code is affected by these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 31, 2009.

TRD-200901264

Lorna Wassdorf

Director, Business and Public Filings Division
Office of the Secretary of State

Effective date: April 20, 2009

Proposal publication date: February 13, 2009

For further information, please call: (512) 463-5562



SUBCHAPTER B. REGISTRATION PROCEDURES

1 TAC §§102.10 - 102.13, 102.15, 102.18

These rules are adopted under the authority of §702.051 and §702.052 of the Texas Occupations Code which provides that the secretary may adopt rules necessary to administer the chapter and determine the disposition of a security claim.

Chapter 702 of the Texas Occupations Code is affected by these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 31, 2009.

TRD-200901265

Lorna Wassdorf

Director, Business and Public Filings Division

Office of the Secretary of State

Effective date: April 20, 2009

Proposal publication date: February 13, 2009

For further information, please call: (512) 463-5562



SUBCHAPTER C. ESCROW

1 TAC §102.20, §102.21

These rules are adopted under the authority of §702.051 and §702.052 of the Texas Occupations Code which provides that the secretary may adopt rules necessary to administer the chapter and determine the disposition of a security claim.

Chapter 702 of the Texas Occupations Code is affected by these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 31, 2009.

TRD-200901266

Lorna Wassdorf

Director, Business and Public Filings Division

Office of the Secretary of State

Effective date: April 20, 2009

Proposal publication date: February 13, 2009

For further information, please call: (512) 463-5562



SUBCHAPTER D. SECURITY

1 TAC §§102.30, 102.32, 102.35, 102.45

These rules are adopted under the authority of §702.051 and §702.052 of the Texas Occupations Code which provides that the secretary may adopt rules necessary to administer the chapter and determine the disposition of a security claim.

Chapter 702 of the Texas Occupations Code is affected by these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 31, 2009.

TRD-200901267

Lorna Wassdorf

Director, Business and Public Filings Division

Office of the Secretary of State

Effective date: April 20, 2009

Proposal publication date: February 13, 2009

For further information, please call: (512) 463-5562



SUBCHAPTER E. GENERAL INFORMATION

1 TAC §102.50

These rules are adopted under the authority of §702.051 and §702.052 of the Texas Occupations Code which provides that the secretary may adopt rules necessary to administer the chapter and determine the disposition of a security claim.

Chapter 702 of the Texas Occupations Code is affected by these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 31, 2009.

TRD-200901268

Lorna Wassdorf

Director, Business and Public Filings Division

Office of the Secretary of State

Effective date: April 20, 2009

Proposal publication date: February 13, 2009

For further information, please call: (512) 463-5562



PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 155. RULES OF PROCEDURE

SUBCHAPTER A. GENERAL

1 TAC §155.1

The State Office of Administrative Hearings (SOAH) adopts an amendment to Subchapter A - General, §155.1 (concerning Purpose), without changes to the proposed text as published in the February 20, 2009, issue of the *Texas Register* (34 TexReg 1167). The amendment is adopted in order to adopt the procedural rules of the Comptroller of Public Accounts that address the hearing process in matters referred by the Comptroller pertaining to protesting preliminary findings of taxable value.

The adopted amendment will clarify and detail the procedures required to protest preliminary findings of the taxable value of property. Additionally, because these hearings are not governed by the Administrative Procedure Act and have accelerated deadlines required in order to finalize the findings of taxable value in time to determine state funding for school districts for the next

fiscal year, they have historically been subject to simplified and expedited procedures tailored to these circumstances. In this context, SOAH determines that adoption of the Comptroller's procedural rules for these hearings is warranted.

No comments were received during the 30-day comment period.

The amendment is adopted under Government Code, Chapter 2003, §2003.050, which authorizes SOAH to conduct contested case hearings and provides that the procedural rules of another state agency apply in SOAH hearings only if the SOAH rules adopt them by reference.

The provisions relate to the authority of SOAH under Government Code, Chapter 2003, and implement Government Code, Chapter 403, §403.303, which concerns protests of the comptroller's preliminary certification of school district total taxable property value.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 27, 2009.

TRD-200901224

Kerry D. Sullivan

General Counsel

State Office of Administrative Hearings

Effective date: April 16, 2009

Proposal publication date: February 20, 2009

For further information, please call: (512) 475-4931



TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 403. GENERAL ADMINISTRATION

16 TAC §403.501

The Texas Lottery Commission (Commission) adopts new 16 TAC §403.501 (relating to Custody and Use of Criminal History Record Information), without changes to the proposed text as published in the February 6, 2009, issue of the *Texas Register* (34 TexReg 784).

The purpose of the new rule is to meet the statutory requirement of Texas Government Code, Chapter 466, Subchapter E, §466.205(b) providing policies for the custody and use of criminal history information. The new rule establishes that all criminal history information will be kept in a secure environment and provided to Commission staff, as needed, to meet the statutory requirements of the Texas Lottery Act and the Bingo Enabling Act; and, will not be released or disclosed except on court order.

The anticipated public benefit of the adopted new rule will be that the Texas Lottery Commission meets the requirements of Texas Government Code, Chapter 466, Subchapter E, §466.205(b). The new rule is based on the current practices of the Commission and conforms the agency rules to the statutory requirements and agency practices.

The Commission received no comments during the public comment period.

The new rule is adopted under Texas Government Code, §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery. The new rule is also adopted under Texas Government Code, §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 27, 2009.

TRD-200901221

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Effective date: April 16, 2009

Proposal publication date: February 6, 2009

For further information, please call: (512) 344-5012



TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 80. PROFESSIONAL CONDUCT

22 TAC §80.5

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §80.5, relating to maintenance of chiropractic records, without changes to the proposed text as published in the January 2, 2009, issue of the *Texas Register* (34 TexReg 23).

The amendment is adopted to provide clearer standards for the contents of chiropractic records. The Board's Enforcement Committee has frequently reviewed patient and billing records from licensees that include only minimal or sparse information regarding their examination and treatment of a patient.

In drafting the amendment to this rule, the Board reviewed similar rules that have been developed by the chiropractic licensing boards of California, Colorado, Florida, Kansas, Missouri, and New York and other guidelines for documenting patient care.

The Board received one comment in support of the proposed amendment from Parker College of Chiropractic.

The amendment is adopted under the Texas Occupations Code, §201.152, relating to rules, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

No other statutes, articles, or codes are affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 25, 2009.

TRD-200901193

◆ ◆ ◆
PART 11. TEXAS BOARD OF NURSING

**CHAPTER 220. NURSE LICENSURE
COMPACT**

22 TAC §220.2, §220.3

The Texas Board of Nursing (Board) adopts amendments to §220.2 and §220.3, concerning the Nurse Licensure Compact (Compact) without changes to the proposed text as published in the February 20, 2009, issue of the *Texas Register* (34 TexReg 1174) and will not be republished.

The adopted amendments to §220.2 and §220.3 implement the Texas Occupations Code Chapter 304, which regulates the Compact. The statutory purpose of the Compact is to: (i) facilitate the states' responsibilities to protect the public's health and safety; (ii) ensure and encourage the cooperation of party states in the areas of nurse licensing and regulation; (iii) facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse action; (iv) promote compliance with the laws governing the practice of nursing in each jurisdiction; and (iv) invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is provided through the mutual recognition of party state licenses. Further, the Texas Occupations Code §304.002 designates the Executive Director of the Board as the Compact administrator for the state. Articles 6 and 8 of the Texas Occupations Code §304.001 provides: (i) Compact administrators with the authority to develop uniform rules to facilitate and coordinate implementation of the Compact and (ii) party state nursing boards with the authority to adopt those uniform rules. The adopted amendments to §220.2 and §220.3 facilitate the coordination of the Compact by implementing policies that have been approved by the member states of the Compact. The adoption of these uniform policies will result in more consistent implementation of the Compact among the party states. Specifically, the adopted amendments to §220.2 are necessary for consistency and clarity among party states regarding the following issues: (i) documentation that may be requested in order to prove a nurse's primary state of residence; (ii) the option of a nurse on a visa to declare his or her country of origin or the party state as his or her primary state of residence; (iii) issuing a single state license to a nurse who declares a foreign country his or her primary state of residence; and (iv) designating when a license issued by one party state authorizes practice in all other party states and when a license issued by one party state does not authorize practice in other party states. It is important that these policies and procedures are adopted by the party states so that the treatment of Compact license applications are consistent among the party states. Further, these adopted amendments are anticipated to result in a more efficient and streamlined Compact application process in Texas. The adopted amendments to §220.3 are necessary to allow a nurse whose license has been revoked, suspended, or surrendered or

whose application has been denied in the nurse's former state of primary residence to be eligible for issuance of a single state license in the nurse's new primary state of residence if the new primary state of residence deems it appropriate. Under adopted §220.3, however, the new primary state action will not provide a multistate privilege. This adopted amendment is significant because a nurse may relocate to a new Compact state and be unable to resolve the disciplinary past with the former state of residence. Adopted §220.3 is anticipated to provide additional flexibility and opportunity to nurses under restricted licenses so that they may practice in a new state of primary residence, if that state of residence deems it appropriate, while resolving disciplinary actions with former states of residence.

The following is a section-by-section overview of the adopted amendments.

§220.2. Issuance of a License by a Compact Party State. Adopted §220.2(b) provides that the following evidence may be requested in order to prove a nurse's primary state of residence: (i) Military Form Number 2058 - state of legal residence certificate; and (ii) W2 from US government of any bureau, division, or agency thereof indicating the declared state of residence. Adopted §220.2(c) provides that a nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. Further, adopted §220.2(c) provides that, if the foreign country is declared the primary state of residence, a single state license will be issued by the party state. Adopted §220.2(d) provides that a license issued by a party state is valid for practice in all other party states unless clearly designated as valid only in the state which issued the license. Adopted §220.2(e) states that when a party state issues a license authorizing practice only in that state and not authorizing practice in other party states (i.e., a single state license), the license shall be clearly marked with words indicating that it is valid only in the state of issuance. The remaining adopted amendments to §220.2 re-designate the subsections accordingly. Adopted §220.3(b) provides that an individual who had a license which was surrendered, revoked, suspended, or an application denied for cause in a prior state of primary residence may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state(s) of adverse action. Further, adopted §220.3(b) provides that, once eligible for licensure in the prior state(s), a multistate license may be issued. The remaining adopted amendments to §220.3 re-designate the subsections accordingly.

The Board did not receive any comments on the proposed amendments.

The amendments are adopted under the Texas Occupations Code Chapter 304, including Articles 6 and 8 of the Texas Occupations Code §304.001, which provides Compact administrators with the authority to develop uniform rules to facilitate and coordinate implementation of the Compact and party state nurse licensing boards with the authority to adopt uniform rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 25, 2009.
TRD-200901190

James W. Johnston
General Counsel
Texas Board of Nursing
Effective date: April 14, 2009
Proposal publication date: February 20, 2009
For further information, please call: (512) 305-6811



PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.71

The Texas State Board of Public Accountancy adopts an amendment to §501.71, concerning Receipt of Commissions and Other Compensation, without changes to the proposed text as published in the January 23, 2009, issue of the *Texas Register* (34 TexReg 404) and will not be republished.

The section establishes a CPA's required disclosure of commissions and other compensations.

The amendment will add language that permits CPAs to provide an estimate of the amount of the CPAs commission for services or products recommended or sold by him when the exact amount is unknown.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2009.

TRD-200901199
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: April 15, 2009
Proposal publication date: January 23, 2009
For further information, please call: (512) 305-7842



CHAPTER 518. UNAUTHORIZED PRACTICE OF PUBLIC ACCOUNTANCY

22 TAC §518.3

The Texas State Board of Public Accountancy adopts an amendment to §518.3, concerning Violation of a Cease and Desist Order, without changes to the proposed text as published in the

January 23, 2009, issue of the *Texas Register* (34 TexReg 405) and will not be republished.

The section establishes the board's procedures when an agreed cease and desist order has been violated.

The amendment will provide language in our rules to seek an injunction in court to expedite our efforts to stop the unlawful activity by those who violate cease and desist orders.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2009.

TRD-200901200
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: April 15, 2009
Proposal publication date: January 23, 2009
For further information, please call: (512) 305-7842



CHAPTER 527. PEER REVIEW

22 TAC §527.2

The Texas State Board of Public Accountancy adopts an amendment to §527.2, concerning Definitions, with changes to the proposed text as published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9649). The change from the proposal can be found throughout the rule.

The section defines terms which are used throughout Chapter 527.

The amendment incorporates recent changes to the AICPA/NASBA Model Rules of the Uniform Accountancy Act.

A comment letter was received regarding the adoption of the amendment. Representatives of the American Institute of Certified Public Accountants and the Texas Society of Certified Public Accountants provided a letter commenting on the proposed revisions and provided suggested changes to the rule revisions as published. The proposed changes to the rule revisions as published are intended to add clarification to the administration of the Peer Review Program.

The Board is in agreement with the proposed changes as suggested in the letter of comment and adopts the rule revisions with the suggested changes included.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§527.2. *Definitions.*

The following words and terms used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Review" or "review program" means the review conducted under the peer review program.

(2) "Review year" means the one-year (twelve-month) period covered by the review. Engagements selected for review normally would have periods ending during the year under review.

(3) "Sponsoring organization" means an entity that meets the standards specified by the board for administering the review. The board shall periodically publish a list of sponsoring organizations, which have been approved by the board.

(4) "Special reports" include but are not limited to reports issued under professional standards in connection with the following:

(A) specified elements, accounts, or items of a financial statement;

(B) compliance with aspects of contractual agreements or regulatory requirements related to audited financial statements;

(C) financial presentations to comply with contractual agreements or regulatory provisions;

(D) financial information presented in prescribed forms or schedules that require a prescribed form of auditor's reports; or

(E) internal audits by a firm for a client or a governmental entity.

(5) "Firm inspection program" means the process of firm inspection administered by the PCAOB.

(6) "Rating" of a peer review refers to the type of report issued. The three types of reports are pass, pass with deficiency(ies), or fail. The peer review rating is clearly indicated in the final paragraph of the review report.

(7) "Acceptance" of an AICPA or TSCPA peer review is the date that the sponsoring organization's peer review report committee (PRRC), referred to in §527.9(a)(1) of this title (relating to Procedures for a Sponsoring Organization), is presented the peer review report on a review with the rating of pass and the PRRC approves the review. The acceptance date and in this case the completion date of the peer review are the same date and is noted in a letter from the administering entity to the reviewed firm. The PRRC will be presented with the peer review report and the firm's letter of response on reviews with a rating of pass with deficiencies or fail. Ordinarily, the PRRC will require the reviewed firm to take corrective action(s) and those actions will be communicated in a letter to the firm from the administering entity. In this circumstance, the "acceptance date" is defined as the date that the reviewed firm signs the letter from the administering entity agreeing to perform the required corrective action(s).

(8) "Completion date" of an AICPA or TSCPA peer review is the date that the sponsoring organization's PRRC, referred to in §527.9(a)(1) of this title, is presented the corrective action and the committee decides that the reviewed firm has performed the agreed-to corrective action(s) to the committee's satisfaction and the committee requires no additional corrective action(s) by the firm. The date is noted in a final letter from the administering entity to the reviewed firm.

(9) "AICPA Public File" is the file for firms that are members of the AICPA's Employee Benefit Plan Audit Quality Center, Governmental Audit Quality Center or Private Companies Practice Section who post their review information to this public file on the AICPA's web site as a membership requirement. Information in the public file

includes the firm's most recently accepted peer review report and the firm's response thereto, if any.

(10) "Peer Review State Board Access (PRSBA)" is the state board limited access web site that provides the most recently accepted peer review report, the firm's letter of response (LOR), the corrective action letter (CAL), and the final letter of acceptance (FLOA).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2009.

TRD-200901201

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: April 15, 2009

Proposal publication date: November 28, 2008

For further information, please call: (512) 305-7842



22 TAC §527.3

The Texas State Board of Public Accountancy adopts an amendment to §527.3, concerning Standards for Peer Reviews and Sponsoring Organizations, with changes to the proposed text as published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9650). The changes from the proposal are in subsection (b).

The section clarifies the minimum standards for reviews and lists qualified sponsoring organizations.

The amendment incorporates recent changes to the AICPA/NASBA Model Rules of the Uniform Accountancy Act.

A comment letter was received regarding the adoption of the amendment. Representatives of the American Institute of Certified Public Accountants and the Texas Society of Certified Public Accountants provided a letter commenting on the proposed revisions and provided suggested changes to the rule revisions as published. The proposed changes to the rule revisions as published are intended to add clarification to the administration of the Peer Review Program.

The Board is in agreement with the proposed changes as suggested in the letter of comment and adopts the rule revisions with the suggested changes included.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§527.3. Standards for Peer Reviews and Sponsoring Organizations.

(a) The board adopts "Standards for Performing and Reporting on Peer Reviews" promulgated by the AICPA and for public company audit firms, the firm inspection standards required under the Sarbanes-Oxley Act of 2002 (SOX), as its minimum standards for review of firms.

(b) Qualified sponsoring organizations shall be the AICPA Peer Review Program, the TSCPAs Peer Review Program and state CPA societies fully involved in the administration of the AICPA Peer

Review Program, NCCPAP, the PCAOB, and such other entities which are approved by the board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2009.

TRD-200901202

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: April 15, 2009

Proposal publication date: November 28, 2008

For further information, please call: (512) 305-7842



22 TAC §527.4

The Texas State Board of Public Accountancy adopts an amendment to §527.4, concerning Enrollment and Participation, with changes to the proposed text as published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9651). The change from the proposal is found in subsection (b) where "which" has been replaced with "that", in subsection (f) where "whatever" has been changed to "any" and in subsection (k), the acronym "PCOAB" has been changed to "PCAOB".

The section establishes the requirement for firms that perform any attest service or accounting and/or audit engagement to participate in a peer review program.

The amendment incorporates recent changes to the AICPA/NASBA Model Rules of the Uniform Accountancy Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§527.4. *Enrollment and Participation.*

(a) Participation in the program is required of each firm licensed or registered with the board that performs any attest service or any accounting and/or auditing engagements, including audits, reviews, compilations, forecasts, projections, or special reports as defined in §901.002 General Definitions of the Public Accountancy Act and §501.52(4), (11) and (22) of this title (relating to Definitions). A firm which issues only compilations where no report is required under the Statements on Standards for Accounting and Review Services is required to participate in the program.

(b) A firm that does not perform services as set out in subsection (a) of this section shall annually submit a request for the exemption in writing to the board with an explanation of the services offered by the firm. A firm which begins providing services as set out in subsection (a) of this section shall notify the board of the change in status within 30 days of the change in status, provide the board with enrollment information within 12 months of the date the services were first provided and have a peer review performed within 18 months of the date the services were first provided.

(c) Each firm required to participate under subsection (a) of this section shall enroll in the applicable programs of an approved spon-

soring organization within 12 months from its initial licensing date or the performance of services that require a review. The firm shall adopt the review due date assigned by the sponsoring organization, and must notify the board of the peer review due date within 30 days of its assignment. In addition, the firm shall schedule and begin an additional review within three years of the previous review's due date, or earlier as may be required by the sponsoring organization or a committee of the board. It is the responsibility of the firm to anticipate its needs for review services in sufficient time to enable the reviewer to complete the review by the assigned review due date.

(d) In the event that a firm is merged, otherwise combined, dissolved, or separated, the sponsoring organization shall determine which firm is considered the succeeding firm. The succeeding firm shall retain its peer review status and the review due date.

(e) The board will accept extensions granted by the sponsoring organization to complete a review, provided the board is notified by the firm within 20 days of the date that an extension is granted.

(f) A firm that has been rejected by a sponsoring organization for any reason must make a request in writing to the board for authorization to enroll in a program of another sponsoring organization.

(g) A firm choosing to change to another sponsoring organization may do so provided that the firm authorizes the previous sponsoring organization to communicate to the succeeding sponsoring organization any outstanding corrective actions related to the firm's most recent review. Any outstanding actions must be cleared and outstanding fees paid prior to transfer between sponsoring organizations.

(h) An out-of-state firm practicing in this state pursuant to a practice privilege provided for in §901.461 of the Act and §517.1 and §517.2 of this title (relating to Practice by Certain Out of State Firms and Practice by Certain Out of State Individuals) of these regulations must comply with the peer review program of the state in which the firm is licensed.

(i) An out-of-state firm practicing in this state pursuant to a practice privilege from a state without a peer review program must comply with §901.159 of the Act and Chapter 517 of these regulations.

(j) An out-of-state firm practicing in this state pursuant to a practice privilege must submit its peer review (or equivalent) documentation upon request of the board.

(k) Interpretive Comment. If a firm is subject to inspections pursuant to SOX and also performs attest work not subject to such inspections, the firm must enroll in a peer review program for review of its non-public company attest work in addition to the firm inspection program required by the PCAOB.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2009.

TRD-200901203

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: April 15, 2009

Proposal publication date: November 28, 2008

For further information, please call: (512) 305-7842



22 TAC §527.5

The Texas State Board of Public Accountancy adopts an amendment to §527.5, concerning Successive Deficient Reviews, with changes to the proposed text published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9652). The change from the proposal can be found throughout the rule.

The section establishes the requirements for firms who have successive deficient reviews to have an accelerated review.

The amendment incorporates recent changes to the AICPA/NASBA Model Rules of the Uniform Accountancy Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§527.5. Successive Deficient Reviews.

(a) A firm, including a succeeding firm, which receives two consecutive reviews with a rating of pass with deficiencies and/or fail on a system or engagement review may be required to have an accelerated review by the Peer Review Committee.

(b) If that accelerated review results in a rating of pass with deficiencies or fail:

(1) the firm may complete attest engagements for which field work has already begun only if:

(A) prior to issuance of any report, the engagement is reviewed and approved by a third party reviewer acceptable to the chairman of the appropriate Technical Standards Review Committee or the Peer Review Committee, and

(B) the engagement is completed within thirty days of the acceptance of the peer review report, and LOR by the sponsoring organization; and

(2) the firm shall not perform any other attest service including any accounting and/or auditing engagements, including, audits, reviews, compilations (as well as compilations where no report is required), forecasts, projections, or other special reports for a period of three years or until given permission by the board to resume this practice.

(c) A firm may petition the board for a waiver from the provisions of this rule.

(d) The board at its discretion may require a firm which has received a rating of pass with deficiencies or fail to have an accelerated peer review or subject it to any other disciplinary or corrective action under the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2009.

TRD-200901204

J. Randel (Jerry) Hill
General Counsel

Texas State Board of Public Accountancy

Effective date: April 15, 2009

Proposal publication date: November 28, 2008

For further information, please call: (512) 305-7842

◆ ◆ ◆
22 TAC §527.6

The Texas State Board of Public Accountancy adopts an amendment to §527.6, concerning Reporting to the Board, with changes to the proposed text published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9653). The change from the proposal can be found throughout the rule.

The section establishes the requirement of each firm to submit documentation of their review report to the Board.

The amendment incorporates recent changes to the AICPA/NASBA Model Rules of the Uniform Accountancy Act.

A letter of comment was received regarding the adoption of the amendment. Representatives of the American Institute of Certified Public Accountants and the Texas Society of Certified Public Accountants provided a letter commenting on the proposed revisions and provided suggested changes to the rule revisions as published. The proposed changes to the rule revisions as published are intended to add clarification to the administration of the Peer Review Program, allows firms 45 days to respond to the Board with the results of reviews, if their reviews are being administered by the National Peer Review Committee (NPRC), recognizes firms with reviews being administered by the NPRC and that are not members of an AICPA audit quality center, must manually report to the Board and addresses the fact that firms outside of Texas must manually report to the Board.

The Board is in agreement with the proposed changes as suggested in the letter of comment and adopts the rule revisions with the suggested changes included.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§527.6. Reporting to the Board.

(a) A firm must submit to the board:

(1) a copy of the peer review report and the FLOA from the sponsoring organization, if such report has a rating of pass;

(2) a copy of the peer review report, the firm's LOR, the CAL, and FLOA if the report has a rating of pass with deficiencies or fail; or

(3) a copy of any final report resulting from any inspection by the PCAOB firm inspection program together with documentation of any significant deficiencies and findings and the firm's response.

(b) Any report or document submitted to the board under this section is confidential pursuant to the Act.

(c) Any report or document (collectively referred to as "documents") required to be submitted under subsection (a) of this section shall be filed with the board as provided below:

(1) For peer reviews scheduled after December 1, 2009, peer review documents will be made available by the TSCPA for firms enrolled in the AICPA and TSCPA Peer Review Programs and administered by the TSCPA. Peer review documents will be made available by the TSCPA by posting such documents within thirty days of issuing its notice of acceptance to such firms on the PRSBA web site. For reviews scheduled prior to December 1, 2009, the reviewed firm must, within ten days of receipt of the notice of completion from the TSCPA, com-

plete the board's Peer Review Compliance Reporting form and submit it to the board along with the required documents.

(2) Firms otherwise enrolled in the AICPA peer review program (including those whose peer reviews are administered by the NPRC) must, within ten days of receipt of the notice of completion from the sponsoring organization, complete the board's Peer Review Compliance Reporting form and submit it to the board along with the required documents. However, this requirement may be met by allowing the firm's peer review documents to be posted on the PRSBA web site, with access granted to the board within thirty days of issuing its notice of acceptance to such firms on the PRSBA web site.

(3) Firms enrolled in the NCCPAP peer review program must, within ten days of receipt of the notice of completion from NCCPAP, complete the board's Peer Review Compliance Reporting form and submit it to the board along with the required documents.

(4) Firms enrolled in the PCAOB inspection program must, within ten days of receipt of the notice of completion from the PCAOB, complete the board's Peer Review Compliance Reporting form and submit it to the board along with the required documents.

(d) The information required under subsection (c) of this section must be filed with the board either by mail or electronically such as by fax, email, or PRSBA web site.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2009.

TRD-200901205

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: April 15, 2009

Proposal publication date: November 28, 2008

For further information, please call: (512) 305-7842



22 TAC §527.7

The Texas State Board of Public Accountancy adopts an amendment to §527.7, concerning Peer Review Oversight Board, with changes to the proposed text published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9654). The change from the proposal can be found throughout the rule.

The section establishes the purposes of the Peer Review Oversight Board.

The amendment incorporates recent changes to the AICPA/NASBA Model Rules of the Uniform Accountancy Act.

A letter of comment was received regarding the adoption of the amendment. Representatives of the American Institute of Certified Public Accountants and the Texas Society of Certified Public Accountants provided a letter commenting on the proposed revisions and provided suggested changes to the rule revisions as published. The proposed changes to the rule revisions as published are intended to add clarification to the administration of the Peer Review Program.

The Board is in agreement with the proposed changes as suggested in the letter of comment and adopts the rule revisions with the suggested changes included.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§527.7. Peer Review Oversight Board.

(a) The board shall retain the Peer Review Oversight Board (PROB) for the purpose of:

(1) monitoring sponsoring organizations to provide reasonable assurance that peer reviews are being conducted and reported in accordance with Standards for Performing and Reporting on Peer Reviews (the Standards) promulgated by the AICPA Peer Review Board;

(2) reviewing the policies and procedures of sponsoring organization applicants as to their conformity with the peer review standards; and

(3) reporting to the board on the conclusions and recommendations reached as a result of performing the functions in paragraphs (1) and (2) of this subsection.

(b) Information concerning a specific firm or reviewer obtained by the PROB during oversight activities shall be confidential, and the firm's or reviewer's identity shall not be reported to the board. Reports submitted to the board will not contain information concerning specific firms or reviewers. Members of the PROB will be required to execute a confidentiality statement for the sponsoring organization which they oversee.

(c) Effective September 1, 2009, the PROB shall consist of three members who are active licensed Texas CPAs. No member of the PROB shall be current members of the board or one of its committees, the TSCPA's Peer Review or Professional Conduct Committee, or the AICPA Professional Ethics Executive Committee (including subcommittees). The members should have extensive experience in accounting and auditing and currently be in the practice of public accountancy at the partner (or equivalent) level, and shall be members of the TSCPA or the AICPA. The member's firm must have received a report with a rating of pass or an unmodified opinion from its last peer review. Compensation of PROB members shall be set by the board.

(d) The PROB shall make an annual recommendation to the board as to the qualifications of an approved sponsoring organization to continue as an approved sponsoring organization on the basis of the results of the following procedures:

(1) Where the sponsoring organization is the AICPA/NPRC, state CPA societies other than Texas, fully involved in the administering AICPA Peer Review Program, or the PCAOB, PROB shall review the published reports of those entities or successors, to determine that there is an acceptable level of oversight;

(2) Where the sponsoring organization is other than those listed in subsection (d)(1) of this section, PROB shall perform the following functions:

(A) At least one member of the PROB shall attend all meetings of each sponsoring organization's PRRC. Certain PRRC meetings may be conducted via telephone. In those instances, the PROB may join the conference call.

(B) During such visits, the PROB shall:

(i) meet with the organization's peer review committee during the committee's consideration of peer review documents;

(ii) evaluate the organization's procedures for administering the peer review program;

(iii) examine, on the basis of a random selection, a number of reviews performed by the organization to include, at a minimum, a review of the report on the peer review, the firm's response to the matters discussed, the sponsoring organization's letter of acceptance outlining any additional corrective or monitoring procedures, and the required technical documentation maintained by the sponsoring organization on the selected reviews; and

(iv) expand the examination of peer review documents if significant deficiencies, problems, or inconsistencies are encountered during the analysis of the materials.

(e) In the evaluation of policies and procedures of sponsoring organization applicants, the PROB shall:

(1) examine the policies as drafted by the applicant to determine that they will provide reasonable assurance of conforming with the standards for peer reviews;

(2) evaluate the procedures proposed by the applicant to determine that:

(A) assigned reviewers are appropriately qualified to perform the review for the specific firm;

(B) reviewers are provided with appropriate materials;

(C) applicant has provided for consulting with the reviewers on problems arising during the review and that specified occurrences requiring consultation are outlined;

(D) applicant has provided for the assessment of the results of the review; and

(E) applicant has provided for an independent report acceptance body that considers and accepts the reports of the review and requires corrective actions by firms with significant deficiencies;

(3) make recommendations to the board as to approval of the applicant as a sponsoring organization.

(f) Annually the PROB shall provide the board's Peer Review Committee with a report on the continued reliance of sponsoring organizations' peer reviews. The PROB report shall provide reasonable assurance that peer reviews are being conducted and reported on consistently and in accordance with the Standards for Performing and Reporting on Peer Reviews (the Standards) promulgated by the AICPA Peer Review Board. A summary of oversight visits shall be included with the annual report.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2009.

TRD-200901206

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: April 15, 2009

Proposal publication date: November 28, 2008

For further information, please call: (512) 305-7842



22 TAC §527.8

The Texas State Board of Public Accountancy adopts an amendment to §527.8, concerning Retention of Documents, with changes to the proposed text published in the November

28, 2008, issue of the *Texas Register* (33 TexReg 9656). The changes from the proposal can be found in subsection (b), deleting the phrase "Peer Review Oversight Board" and replacing it with its acronym and deleting "acceptance" and replacing it with "completion".

The section establishes the retention period for the reviewer to maintain documentation.

The amendment incorporates recent changes to the AICPA/NASBA Model Rules of the Uniform Accountancy Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§527.8. Retention of Documents.

(a) Each reviewer shall maintain all documentation necessary to establish that each review conformed to the review standards of the relevant review program, including the review working papers, copies of the review report, and any correspondence indicating the firm's concurrence, non-concurrence, and any proposed remedial actions and any related implementation.

(b) The documents described in subsection (a) of this section shall be retained by the reviewer for a period of time corresponding to the retention period of the sponsoring organization, and upon request of the PROB, shall be made available. In no event shall the retention period be less than 120 days from the date of completion of the review by the sponsoring organization.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2009.

TRD-200901207

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: April 15, 2009

Proposal publication date: November 28, 2008

For further information, please call: (512) 305-7842



22 TAC §527.11

The Texas State Board of Public Accountancy adopts an amendment to §527.11, concerning Responsibilities of Peer Review Report Committee, without changes to the proposed text as published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9657) and will not be republished.

The section establishes the responsibilities of the Peer Review Report Committee.

The amendment incorporates recent changes to the AICPA/NASBA Model Rules of the Uniform Accountancy Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2009.

TRD-200901208

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: April 15, 2009

Proposal publication date: November 28, 2008

For further information, please call: (512) 305-7842



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

The Texas Water Development Board (Board) adopts amendments to §363.1006 and §363.1207 with changes to the proposed text as published in the January 30, 2009, issue of the *Texas Register* (34 TexReg 513). The amendments to §§363.1007, 363.1206, and 363.1208 are adopted without changes to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The Board adopts this rulemaking to amend its current rules related to the application and prioritization process for the Board's commitment to provide financial assistance from its State Participation Account and Water Infrastructure Fund. The adopted amendments will clarify the prioritization process and will provide the flexibility needed for the Board to make commitments to financial assistance and to sell bonds to raise funds for those commitments before the end of each fiscal year. The Board funds the State Participation Account and Water Infrastructure Fund through the issuance of Water Financial Assistance Bonds, which are General Obligation Bonds of the State of Texas. Both the State Participation Account and Water Infrastructure Fund programs offer loans at discounts or with deferred interest, so they are non-self supporting programs, meaning that the Board is not able to pay the debt service on its Water Financial Assistance Bonds solely with the repayment of the loans it makes through these programs. Thus, the Texas Legislature appropriates funds to both of these programs as necessary to allow the Board to pay the debt service on its Bonds. The legislative appropriations are effective for each fiscal year starting September 1, so the Board attempts to sell bonds as necessary to fund existing commitments for financial assistance within each fiscal year, commensurate with the amount of Legislative appropriation for debt service for that fiscal year.

The adopted rulemaking also clarifies the Board's rule regarding the eligibility of reservoir projects for the Pre-design Funding Option under the Board's Water Infrastructure Fund.

SECTION BY SECTION DISCUSSION, COMMENTS, AND RESPONSES TO COMMENTS

The Board received comments from Connie Ripley, President of the Don't Empty Lake Travis Association, on behalf of the board and members of the Association (hereinafter the "commenter").

§363.1006(a)

The adopted amendment of §363.1006(a) changes the application deadlines from January 1 and July 1 to February 1 and August 1 of each year. Applications for financial assistance are prioritized twice each year and are funded based on available funds. Current §363.1006(a) requires that applications for financial assistance from the State Participation Account and Water Infrastructure Fund, respectively, be submitted on January 1 and July 1 of each year for prioritization. However, the Board believes that revising these deadlines will provide better management of the sale of bonds in coordination with the Board's fiscal year. The Board needs to make commitments early enough during each fiscal year so that the Board may sell its bonds within that fiscal year to raise funds for those commitments, utilizing legislative appropriations available during each fiscal year. Thus, the adopted rulemaking changes these application deadlines from January 1 and July 1 to February 1 and August 1 of each year, so that the Board can prioritize the applications in March and September, to allow adequate time to make commitments and sell bonds before the end of each fiscal year. In addition, the adopted rulemaking provides that the Executive Administrator may set additional application deadlines, prioritize applications, and present those applications to the Board for a commitment if the Executive Administrator deems it necessary in order to utilize available funds in any fiscal year.

The adopted amendment of §363.1006(a) also allows the Executive Administrator to accept abridged applications for prioritization purposes, as long as those applications contain adequate information to establish that the applicant qualifies for state participation funding, to describe the project comprehensively, and to establish the cost of the project, as well as any other information requested by the Executive Administrator. Section 363.1006(a) currently requires a complete application for prioritization purposes, and many applicants have found this requirement burdensome, especially when the applicant might not be ranked high enough to receive funding, depending on the availability of funds. Therefore, the adopted amendments allow the Executive Administrator to accept abridged applications for prioritization purposes, as long as those applications contain adequate information necessary for prioritization purposes.

The adopted amendment of §363.1006(a) also adds a provision that an applicant must submit a complete application to the board within 30 days after the Board meeting at which the project receives priority for funding, or the project will lose its priority ranking and the Board may commit to other projects consistent with the prioritization.

Comment 1: The commenter states that prioritization should not include applications previously considered and urges the Board to clarify this position so that prior applicants who merely regenerate the same application in another guise will not be considered until after the expiration of a calendar year.

The Board disagrees with this comment. An applicant should be able to resubmit its application for the next round of prioritization if it does not score high enough for funding in a previous round. In fact, the Executive Administrator of the Board has historically allowed applicants to resubmit their applications. Waiting until after the expiration of a calendar year would not benefit the process, and applicants will not be at a disadvantage because projects are independently scored during each round of prioritization. The Board makes no changes pursuant to this comment.

Comment 2: The Executive Administrator's decision setting additional deadlines and prioritizing applications in order to utilize available funding should identify the specific reasoning involved as well as providing a statement as to why the funds remain available.

The Board agrees that the Executive Administrator should demonstrate his reasoning behind his decision to set additional deadlines and prioritize applications, and why there are funds available after the second round of prioritization and commitments. However, the Board does not think it is necessary to put this requirement in the rule because the Executive Administrator must present the additional prioritization to the Board and will have the obligation at that time to explain the reasons for the additional round of prioritization and why funds remain available. No change is made pursuant to this comment.

Comment 3: Regarding additional deadlines and priorities, the proposed rule penalizes entities submitting a complete application on the due date by allowing for the possibility of an expanded pool of applicants, and thus may impair the ability of an applicant with a complete application to have its project considered on its merits.

The Board disagrees with this comment. The rule does not penalize nor give preference to those with either completed or abridged applications. Instead, the rule is intended to make it easier to submit applications for prioritization purposes. The Board wishes to expand the pool of applicants, rather than restrict it, so that the Board can prioritize and fund projects that provide the greatest benefit to the communities of Texas. Also, the information in an application that is relevant to prioritization determinations is not compromised. No change is made pursuant to this comment.

Comment 4: The suggested purpose appears to allow the Executive Administrator to reprioritize projects in an attempt to "use it or lose it" regarding remaining funds. While we are sure that there are lots of desirable and worthy projects around the state, it should not detract from a thorough and honest review.

The Board agrees with this comment, but no change is made pursuant to this comment. All applications for funding are thoroughly and conscientiously reviewed before prioritization and before consideration for commitment to funding.

Comment 5: The ability of the Executive Administrator to unilaterally alter or set additional deadlines and prioritize applications makes priority rankings ineffective and renders the proposed process susceptible to additional questions and in need of oversight and accountability.

The Board disagrees with this comment. The additional deadlines are only authorized if the Executive Administrator finds it necessary to take advantage of available funding. Additional prioritizations are intended to be used in order to commit all funds that could be raised by the Board's issuance of bonds before the legislative appropriation for those bonds lapses. The Executive

Administrator is accountable to the Board and must present any additional prioritizations to the Board. The deadlines for prioritization are established to provide each applicant the ability to be considered alongside other applications and to be prioritized on a fair and competitive basis consistent with statutory criteria, rather than first-come, first-served. Allowing the Executive Administrator to set additional deadlines and prioritize additional applications will not make priority rankings ineffective, but will instead provide the Board with additional applications to consider for funding if the previous rounds of prioritization do not result in commitments for all of the available funds. This approach maximizes the benefit of any given legislative appropriation. No change is made pursuant to this comment.

Comment 6: Reprioritizing applicants who find that submitting a complete application in a timely fashion is somehow burdensome as identified in the rule's reasoning does an injustice to those applicants who have spent their time and resources on submitting a properly completed application.

The Board disagrees with this comment. The rule will benefit all applicants to have the option to submit an abridged application for prioritization purposes, and all applicants are free to choose whether to submit a complete application or an abridged application for prioritization purposes. Further, the abridged application for prioritization purposes must contain enough information for the Executive Administrator to score and fairly prioritize projects. No change is made pursuant to this comment.

Comment 7: The 30 day grace period is without teeth if, in missing this deadline, the project "may" lose its priority.

The Board agrees with this comment. The proposed rule provides that an applicant "may" lose its priority if it does not submit a complete application by the deadline. If there is a large amount of competition for available funds, it will benefit both the Board and applicants to require applicants to automatically lose their priority if they cannot timely submit a complete application. If an applicant automatically loses its priority, the Executive Administrator can more quickly bring the next applicant in line to the Board for a funding commitment. Accordingly, the proposed text is changed by inserting the word "will" instead of "may."

Comment 8: Overall, the proposed system does not appear to allow all administratively complete and technically feasible applicants to be considered equally.

The Board disagrees with this comment. The abridged application for prioritization purposes must contain enough information for the Executive Administrator to score and fairly prioritize projects based on statutory criteria and Board rules. Those applications that are administratively complete may be immediately considered by the Board for a funding commitment, whereas abridged applications must be administratively complete before the Board will consider them for a funding commitment. Either way, each application is considered equally on its own merits for both prioritization and commitment purposes. No change is made pursuant to this comment.

§363.1006(b)

The adopted amendment of §363.1006(b) deletes the requirement that the Executive Administrator provide the Board a list of all completed applications, in order to be consistent with the adopted amendment of §363.1006(a) allowing the Executive Administrator to accept abridged applications for prioritization purposes. The amendment also adds language that clarifies that the Executive Administrator is to provide a prioritized list to the

Board with applications recommended by the Executive Administrator.

No comments were received regarding this section.

§363.1006(c)

The adopted amendment of §363.1006(c) deletes the requirement that legislatively-mandated projects receive priority for financial assistance and moves this requirement to §363.1007(a). Currently, §363.1006(c) contains the requirement that legislatively-mandated projects receive priority for financial assistance. However, the Executive Administrator should take this requirement into account when preparing the prioritized list under the prioritization criteria in §363.1007. Therefore, the adopted amendment moves this requirement to §363.1007 so that the Executive Administrator will prioritize the Legislatively-mandated projects first in the prioritized list that is presented to the Board under the procedures in §363.1006.

No comments were received regarding this section.

§363.1007

The adopted amendment of §363.1007 adds subsection (a) with the requirement that the board will give priority to projects that the Legislature has determined shall receive priority for financial assistance from the State Participation Account. It also reletters current subsection (a) as (b), and requires that the Executive Administrator will prioritize projects after first prioritizing projects with legislative priority.

No comments were received regarding this section.

§363.1206

The adopted amendment of §363.1206(b) clarifies that reservoir projects are eligible for a Board commitment to fund planning, permitting, acquisition and design costs under the Water Infrastructure Fund pre-design funding option. Applicants for reservoir construction funds must complete planning, permitting, acquisition, and design before receiving a commitment to fund reservoir building costs. Section 363.1206(b) can currently be interpreted to mean that reservoir projects are not eligible for the pre-design funding option under the Water Infrastructure Fund. The intent of the rule is to require applicants to obtain two separate commitments from the Board for reservoir pre-design activities versus construction activities, not to preclude the pre-design funding option for reservoirs altogether. Texas Water Code §15.974(a)(3) specifically provides for the funding of planning, design, and permitting costs from the Water Infrastructure Fund, which are considered pre-design activities. The amendment clarifies that, for reservoir projects, the Board intends to make commitments from the Water Infrastructure Fund for the building costs of reservoirs separately from the planning, permitting, acquisition, and design costs. The adopted amendment of §363.1206(b) is also consistent with the Board's adopted deletion of similar language prohibiting pre-design funding for reservoirs in §363.16(b), published in the December 12, 2008, issue of the *Texas Register* (33 TexReg 10133). That rulemaking will allow for the Board's commitment to fund all phases of a reservoir project under the pre-design funding option from the Board's financial assistance programs other than the Water Infrastructure Fund.

No comments were received regarding this section.

§363.1207(a)

The adopted amendment of §363.1207(a) changes these application deadlines from January 1 and July 1 to February 1 and August 1 of each year. Applications for financial assistance are prioritized twice each year and are funded based on available funds. Current §363.1207(a) requires that applications for financial assistance from the State Participation Account and Water Infrastructure Fund, respectively, be submitted on January 1 and July 1 of each year for prioritization. However, the Board believes that revising these deadlines will provide better management of the sale of bonds in coordination with the Board's fiscal year. The Board needs to make commitments early enough during each fiscal year so that the Board may sell its bonds within that fiscal year to raise funds for those commitments, utilizing legislative appropriations available during each fiscal year. Thus, the adopted rulemaking changes these application deadlines from January 1 and July 1 to February 1 and August 1 of each year, so that the Board can prioritize the applications in March and September, to allow adequate time to make commitments and sell bonds before the end of each fiscal year. In addition, the adopted rulemaking provides that the Executive Administrator may set additional application deadlines, prioritize applications, and present those applications to the Board for a commitment if the Executive Administrator deems it necessary in order to utilize available funds in any fiscal year.

The adopted amendment of §363.1207(a) also allows the Executive Administrator to accept abridged applications for prioritization purposes, as long as those applications contain adequate information to establish that the applicant qualifies for state participation funding, to describe the project comprehensively, and to establish the cost of the project, as well as any other information requested by the Executive Administrator. Section 363.1207(a) currently requires a complete application for prioritization purposes, and many applicants have found this requirement burdensome, especially when the applicant might not be ranked high enough to receive funding, depending on the availability of funds. Therefore, the adopted amendments allow the Executive Administrator to accept abridged applications for prioritization purposes, as long as those applications contain adequate information necessary for prioritization purposes.

The adopted amendment of §363.1207(a) also adds a provision that an applicant must submit a complete application to the Board within 30 days after the Board meeting at which the project receives priority for funding, or the project will lose its priority ranking and the Board may commit to other projects consistent with the prioritization.

The commenter states that it has the similar/same comments as with §363.1006(a) above.

In response to the "similar/same comments" as the commenter has with §363.1006(a), the Board references its responses to those comments above, and makes no changes except where the proposed rule provides that an applicant "may" lose its priority if it does not submit a complete application by the deadline. If there is a large amount of competition for available funds, it will benefit both the Board and applicants to require applicants to automatically lose their priority if they cannot timely submit a complete application. If an applicant automatically loses its priority, the Executive Administrator can more quickly bring the next applicant in line to the Board for a funding commitment. Accordingly, the proposed text is changed by inserting the word "will" instead of "may."

The commenter states that allowing for abridged applications allows for the manipulation of applicants and penalizes those ap-

plicants who spent time and resources on submitting a properly completed application--in effect giving a candidate or project that the commenter considers less qualified a "second bite at the apple."

The Board disagrees with this comment because it will benefit all applicants to have the option to submit an abridged application for prioritization purposes, and all applicants are free to choose whether to submit a complete application or an abridged application for prioritization purposes. Further, the abridged application for prioritization purposes must contain enough information for the Executive Administrator to score and fairly prioritize projects consistent with statutory criteria and Board rules. No change is made pursuant to this comment.

§363.1207(b)

The adopted amendment of §363.1207(b) deletes the requirement that the Executive Administrator provide the Board a list of all completed applications, in order to be consistent with the adopted amendment of §363.1207(a) allowing the Executive Administrator to accept abridged applications for prioritization purposes. The amendment also adds language that clarifies that the Executive Administrator is to provide a prioritized list to the Board with applications recommended by the Executive Administrator.

§363.1207(c)

The adopted amendment of §363.1207(c) deletes the requirement that Legislatively-mandated projects receive priority for financial assistance and move the requirement to §363.1208(a). Currently, §363.1207(c) contains the requirement that legislatively-mandated projects receive priority for financial assistance. However, the Executive Administrator should take this requirement into account when preparing the prioritized list under the prioritization criteria in §363.1208. Therefore, the adopted amendment moves this requirement to §363.1208(a) so that the Executive Administrator will prioritize the Legislatively-mandated projects first in the prioritized list that is presented to the Board under the procedures in §363.1006.

No comments were received regarding this section.

§363.1208

The adopted amendment of §363.1208(a) adds the requirement that the Board will give priority to projects that the Legislature has determined shall receive priority for financial assistance from the Water Infrastructure Fund.

The adopted amendment of §363.1208(b) makes non-substantive technical corrections for clarity.

The adopted amendment of §363.1208(c) adds the provision that the median annual household income may also be calculated using data from a survey approved by the Executive Administrator of a statistically acceptable sampling of customers in the service area completed within the last 12 months. Currently, §363.1208(c) requires the use of U.S. Bureau of the Census data. The amendment is necessary because certain areas of the State might not be able to determine the median annual household income from available U.S. Bureau of the Census data.

The commenter states, regarding §363.1208(c), that this rule should clearly state that the alternative method can only be used in those areas unable to determine income from Census data and the Board should define the term "statistically acceptable" so that all applicants are examined and considered fairly.

The Board disagrees with this comment. The alternate method may be used whether or not there is Census data available for an area, although the Board agrees that the alternative method may be the only way to determine the median household income in a service area for which there is no Census data available. Also, it would be difficult to adequately define "statistically acceptable," as a categorical definition appropriate to all circumstances. Accordingly, the rule provides that the sampling must be statistically acceptable to the Executive Administrator, and the Executive Administrator's determination will be reviewed by the Board prior to commitment. This term is also used in other Board rules regarding determining median household income. See, e.g., 31 TAC §371.24(b)(7) and §375.19(b)(7). No change is made pursuant to this comment.

SUBCHAPTER J. STATE PARTICIPATION PROGRAM

31 TAC §363.1006, §363.1007

STATUTORY AUTHORITY

The amendments are adopted under the authority of Texas Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board; §15.977, which authorizes the Board to adopt rules necessary to administer Texas Water Code, Chapter 15, Subchapter Q; and §15.995, which authorizes the Board to adopt rules necessary to administer Texas Water Code, Chapter 15, Subchapter R.

Cross reference to statute: Texas Water Code, Chapters 15 and 17.

§363.1006. *Prioritization System.*

(a) The executive administrator will prioritize all applications not previously considered by the board twice annually. An application must be submitted by February 1 to be prioritized in March. An application must be submitted by August 1 to be prioritized in September. The executive administrator will provide the prioritization to the board for approval in March and September of each year or as soon thereafter as practicable. The executive administrator may set additional application deadlines, prioritize applications, and present the prioritization and those applications to the board for a commitment if the executive administrator deems it necessary in order to utilize available funds in any fiscal year. To be considered for prioritization, an applicant must provide adequate information to establish that the applicant qualifies for state participation funding, to describe the project comprehensively, and to establish the cost of the project, as well as any other information requested by the executive administrator. The executive administrator will develop and provide to applicants detailed information on the abridged application necessary for prioritization. If an applicant submits an abridged application for prioritization purposes, the applicant must submit a complete application to the board within 30 days after the board meeting at which the applicant's project received priority for funding, or the project will lose its priority ranking and the board may commit to other projects consistent with the prioritization.

(b) Prior to each board meeting at which applications may be considered, the executive administrator shall:

(1) for each application that the executive administrator has determined has adequate information for prioritization purposes, prioritize the applications using the criteria identified in §363.1007 of this title (relating to Prioritization Criteria).

(2) provide to the board a prioritized list of all applications as recommended by the executive administrator, the amount of funds requested and the priority of each application received; and

(3) identify to the board, the total amount of funds available in the State Participation Account for new applications.

(c) When making commitments for financial assistance from the State Participation Account, the board will consider projects in descending numerical order based on the priority assigned to the application according to §363.1007 of this title. The board will consider the next application on the list only if there are funds available in the account to fund all or, if acceptable to the applicant, a part of the application.

(d) The board shall determine the amount of funds available for water plan projects and shall prioritize and consider those separately from projects that are not water plan projects.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2009.

TRD-200901209

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Effective date: April 15, 2009

Proposal publication date: January 30, 2009

For further information, please call: (512) 463-8061



SUBCHAPTER L. WATER INFRASTRUCTURE FUND

31 TAC §§363.1206 - 363.1208

STATUTORY AUTHORITY

The amendments are adopted under the authority of Texas Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board; §15.977, which authorizes the Board to adopt rules necessary to administer Texas Water Code, Chapter 15, Subchapter Q; and §15.995, which authorizes the Board to adopt rules necessary to administer Texas Water Code, Chapter 15, Subchapter R.

Cross reference to statute: Texas Water Code, Chapters 15 and 17.

§363.1207. *Prioritization System.*

(a) The executive administrator will prioritize all applications not previously considered by the board twice annually. An application must be submitted by February 1 to be prioritized in March. An application must be submitted by August 1 to be prioritized in September. The executive administrator will provide the prioritization to the board for approval in March and October of each year or as soon thereafter as practicable. The executive administrator may set additional application deadlines, prioritize applications, and present the prioritization and those applications to the board for a commitment if the executive administrator deems it necessary in order to utilize available funds in any fiscal year. To be considered for prioritization, an applicant must provide adequate information to establish that the applicant qualifies for Water Infrastructure Fund funding, to describe the project comprehensively, and to establish the cost of the project, as well as any other information requested by the executive administrator. The executive administrator will develop and provide to applicants detailed information on the abridged application necessary for prioritization. If an applicant submits an abridged application for prioritization purposes, the

applicant must submit a complete application to the board within 30 days after the board meeting at which the applicant's project received priority for funding, or the project will lose its priority ranking and the board may commit to other projects consistent with the prioritization.

(b) Prior to each board meeting at which applications may be considered for prioritization, the executive administrator shall:

(1) for each application that the executive administrator has determined has adequate information for prioritization purposes, prioritize the applications by the criteria identified in §363.1208 of this title (relating to Prioritization Criteria).

(2) provide to the board a prioritized list of all applications as recommended by the executive administrator, the amount of funds requested and the priority of each application received and

(3) identify the total amount of funds available in the Water Infrastructure Fund for new applications.

(c) If there are funds in the Water Infrastructure Fund available for all or part of any of the prioritized projects, the board will first consider any projects that the legislature has determined shall receive priority for financial assistance from the Water Infrastructure Fund. If, after considering projects with legislative priority, there are funds available for other eligible projects in the Water Infrastructure Fund, then the board will consider applications to make a commitment for financial assistance in descending order of priority according to §363.1208 of this title. The board will consider the next application on the list only if there are funds available in the account to fund all or, if acceptable to the applicant, a part of the application.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2009.

TRD-200901210

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Effective date: April 15, 2009

Proposal publication date: January 30, 2009

For further information, please call: (512) 463-8061



CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

SUBCHAPTER I. PROVISIONS RELATING TO APPLICATIONS FOR FINANCIAL ASSISTANCE UNDER SPECIAL CAPITALIZATION GRANTS; EXPEDITED REVIEW, PROCESSING AND LOAN CLOSING REQUIREMENTS

31 TAC §§371.200 - 371.208

The Texas Water Development Board (TWDB or Board) adopts new Subchapter I, §§371.200 - 371.208, regarding the Drinking Water State Revolving Fund. Sections 371.203 - 371.205 are adopted with changes to the proposed text as published in the January 30, 2009, issue of the *Texas Register* (34 TexReg 517). Sections 371.201, 371.202, and 371.206 - 371.208 are adopted without changes to the proposed text as published and will not be republished.

The rules relate to the Drinking Water State Revolving Fund. They provide for an expedited financial application review, processing and closing process for applications which have been filed in response to special federal capitalization grants for emergency events, economic recovery efforts and similar special initiatives. The purpose of these rules is to provide the Board with appropriate flexibility in complying with terms and conditions required for special funding in order to ensure that the funding is fully utilized to the benefit of the state's political subdivisions.

The Board received comments from Connie Ripley, President of the Don't Empty Lake Travis Association, on behalf of the Association (hereinafter the "commenter").

§371.200

The Board adopts new §371.200 (relating to Purpose) in order to make clear that the provisions of Subchapter I are to be interpreted and applied in a manner that fully supports whatever flexibility is necessary and appropriate to implement the terms and conditions of any special capitalization grant.

The commenter states that "whatever flexibility" suggests that other rules and processes would be disregarded to use or lose funds and requested clarification that this in no way diminishes the existing programs or reviews. Being flexible should not mean having to ignore existing constraints that are based on learned experience. The Board makes no change because the rule as proposed recognizes that the flexibility is limited by existing restraints. Section 371.200 as proposed states that the flexibility is specified "as necessary and appropriate to the terms of that capitalization grant or the requirements of any capitalization grant agreement to the greatest extent necessary." No change is made pursuant to this comment.

§371.201

The Board adopts new §371.201 (relating to Definitions) to define the terms "capitalization grant", "emergency event" and "ready to proceed." The term "capitalization grant" means a capitalization grant funded by a special appropriation from the United States Congress for any special purpose, including, but not limited to, responding to emergency events and supporting economic recovery efforts. The term "emergency event" shall be broadly defined to include natural disasters such as hurricanes, tornadoes, flooding events, earthquakes, prolonged drought conditions and other natural disasters as well as man-made disasters, acts of terrorism or enemy attacks that result in damage to or the impairment of a public water supply system. The term "ready to proceed" means that a project has all of the approvals required in this chapter needed in order to commence construction.

The commenter states, regarding §371.201(3), that the term "approvals" is ambiguous, and requested clarification. Also, the TWDB should provide a comprehensive list of what it expects is necessary in order to avoid misunderstandings. The Board makes no change because the rule is unambiguous that a project is considered ready to proceed if it has all of the approvals required in Chapter 371 in order to commence construction. The Board purposely referenced the entire chapter, and did not specifically list in this definition all the requirements to commence construction, because the requirements for each stage of the financial assistance process are found throughout the chapter, and any attempt to include a list of those requirements in this rule could be confusing and would not necessarily serve to clarify the definition. No change is made pursuant to this comment.

§371.202

The Board adopts new §371.202 (relating to Eligibility Requirements) to define those projects and activities that are eligible for this expedited application review, processing and closing process. All projects must be listed on an intended use plan (IUP) for the Drinking Water State Revolving Fund program and must further be related to or arising from an emergency event(s) or an economic recovery initiative or other special purpose being implemented by the EPA or other federal agency through a capitalization grant agreement executed by and between the Board and the EPA.

§371.203

The Board adopts new §371.203 (relating to Intended Use Plan) to provide procedures to develop an IUP as necessary to implement any special capitalization grant. The IUP will identify those projects anticipated to receive assistance from funds available under the capitalization grant. The list of projects in the IUP, which shall be presented by priority ranking, may also serve as a project priority list if required by the capitalization grant. The adopted rule contains a non-substantive technical correction from the proposed rule in that "executive director" is replaced with "executive administrator" in subsection (f).

The commenter states, regarding §371.203(f), that the rule should identify that an expedited review will nonetheless be presented to the Board as contemplated in §371.206. The Board disagrees. Section 371.203(f) as proposed already requires approval by the Board of any revised process used to expedite the rating process. Section 371.206, on the other hand, has to do with action by which the Board commits funding to individual applications, rather than the process by which the applications are rated prior to Board action on specific funding commitments. No change is made pursuant to this comment.

§371.204

The Board adopts new §371.204 (relating to Applicable Rules) to provide that the rules governing applications for funding from the state's Drinking Water State Revolving Fund will be generally applicable to an application for expedited review, processing and closing under this subchapter, except as provided otherwise in this subchapter.

§371.205

The Board adopts new §371.205 (relating to Review of Applications by Executive Administrator) to explain the manner in which the staff intends to review and process the incoming applications seeking expedited review. The executive administrator shall review each application to determine whether it is administratively complete and shall request any additional information needed in order to process the application as soon as practicable. Such information shall be provided within the timeframe specified by the executive administrator. Once administratively and technically complete, the application will be scheduled for Board consideration.

§371.206

The Board adopts new §371.206 (relating to Formal Action by the Board) to specify the manner in which applications undergoing expedited review and processing under this subchapter will be considered by the Board. The executive administrator shall present the application to the Board as soon as practicable after the application has been deemed administratively complete, the project has been deemed eligible for funding and the project has

been deemed to be technically feasible. The applicant and other interested parties known to the Board will be notified of the time and place of the Board meeting prior to the meeting and arguments both for and against the issuance of the financing commitment may be made at that time.

At the conclusion of the meeting, the Board will have the authority to approve, disapprove, amend or continue consideration of the application. The Board may only approve the application if it finds that the revenue and/or taxes pledged by the applicant will be sufficient to meet any loan obligations assumed by the applicant. The commitment will specify the applicable commitment period, after which time the commitment expires.

The commenter states, regarding §371.206(a), that the provision ensuring evidence and arguments are heard should be mandatory. The Board disagrees with this comment because there is no requirement, statutory or otherwise, that the Board hear evidence and arguments or hold a contested case hearing on an application for financial assistance. The Board, however, considers applications for funding in open meetings where the public may present comments. No change is made pursuant to this comment.

§371.207

The Board adopts new §371.207 (relating to Lending Rates) to define pertinent terms and to establish procedures that will be used to set lending rates for projects arising from emergency events, economic recovery efforts, or other special purposes consistent with the terms of the capitalization grant. In establishing the procedures to be used to set rates for applications processed under this subchapter, the executive administrator shall set interest rates for loans under this subchapter based upon costs of funds to the Board, risk factors associated with managing the Board's loan portfolio, market rate scales, and other factors consistent with the capitalization grant. In terms of timing, the executive administrator will set rates for loans on a date that is five (5) business days prior to the adoption of the political subdivision's bond ordinance or resolution or the execution of a loan agreement; and not more than 45 days before the anticipated closing of the loan from the Board. After 45 days from the assignment of the interest rate on the loan, the rates may only be extended with the executive administrator's approval.

§371.208

The Board adopts new §371.208 (relating to Waiver of Rules) to allow the provisions of this subchapter to be waived or modified by the executive administrator as necessary and appropriate to implement the terms of the special capitalization grant or to comply with the conditions of the capitalization grant agreement. The Board must find that all waivers or modifications of this subchapter are necessary and appropriate to implement the terms of the capitalization grant or to comply with the conditions of the capitalization grant agreement prior to approving any application for financial assistance using this expedited review, processing and closing process.

The commenter states, regarding §371.208(a), that in accepting special capitalization grants and in negotiating their terms, the Board should clearly be an active participant and act separately on each item requiring a waiver of any portion of this subchapter. The Board agrees with this comment, but makes no changes to the rule as proposed. The proposed rule includes a requirement that the Board must find that all waivers or modifications of this subchapter are necessary and appropriate to implement the terms of the capitalization grant or to comply with the con-

ditions of the capitalization grant agreement prior to approving an application for financial assistance using this expedited review, processing and closing process. The Board is an active participant insofar as the Board provides direction to the executive administrator through its rules and through its discussions at Board meetings. The executive administrator is statutorily authorized to perform the Board's administrative functions with the direction of the Board.

The commenter states, regarding §371.208(b), that any finding by the Board to support any waiver should require the Board specify and explain its reasons and findings. It is current practice that the Board bases its findings on sufficient reasons. No change is necessary to the rule as proposed. The reasons for the Board's findings are explained in the record of each application, including the executive administrator's memoranda to the Board, and listed in the resolutions the Board issues to make commitments to financial assistance. No change is made pursuant to this comment.

Statutory authority: Texas Water Code, §6.101 and §15.605.

Cross reference to statute: Texas Water Code, Chapter 15, Subchapter J.

§371.203. *Intended Use Plan.*

(a) The board shall prepare an intended use plan (IUP) in cooperation with Texas Commission on Environmental Quality (TCEQ) to meet the requirements of the capitalization grant. The IUP will identify those projects anticipated to receive assistance from funds available under the capitalization grant. The list of projects in the IUP, which shall be presented by priority ranking, may also serve as a project priority list if required by the capitalization grant.

(b) The process for listing projects in the IUP shall be as follows.

(1) As necessary, the executive administrator will provide written notice and solicit project information from entities desiring to receive funding commitments. The notice shall include the form(s) to be used to submit information needed to rate the project and the deadline by which such rating information must be submitted in order for the project to be rated and included in the IUP. The required project information shall include, at a minimum, the following:

- (A) the information needed to rate the project;
- (B) a description of the proposed facilities;
- (C) a description of any required permits, licenses, registrations and other legal authorizations;
- (D) the estimated total project cost;
- (E) an estimated schedule for construction of the proposed project;
- (F) whether the applicant is under enforcement by the TCEQ or the EPA;
- (G) for those potential applicants with existing populations of 25,000 or fewer, information regarding whether the community is eligible to receive funding as a disadvantaged community as defined in §371.24 of this title (relating to Disadvantaged Community Program through Loan Subsidies);
- (H) a statement that the project is ready to proceed to construction with sufficient detail to support and justify the expedited review process; and
- (I) such other information as may be requested by the executive administrator.

(2) The required information must be submitted not later than the deadline specified in the most recent written notice.

(c) Subsequent to adoption of an IUP, the nature of a proposed project included in the IUP may change with written approval of the executive administrator consistent with the terms of the capitalization grant:

(d) If any changes are proposed to the project which would result in a change to the rating score, the project must be re-ranked in the IUP. In this case, the availability of funds will be determined based on the revised rating score.

(e) The IUP will be presented for adoption to the board at a scheduled meeting at which time the board will receive public comment before adopting the plan.

(f) The executive administrator may revise the rating process established in §371.19 of this title (relating to Rating Process) for those applicants seeking an expedited review under this subchapter provided that this revised process is consistent with the capitalization grant and is approved by the board.

§371.204. Applicable Rules.

(a) An application shall comply with the requirements of Chapter 371, Subchapters A - H, except as otherwise provided in Subchapter I or specified by the executive administrator.

(b) In addition to requirements for applications incorporated under subsection (a) of this section, an application under this subchapter shall include a brief description of the project including, but not limited to, the following:

- (1) the need for the project;
- (2) that the project is consistent with the purposes of the capitalization grant, as defined by terms of the capitalization grant agreement and as determined by the board;
- (3) that the project is ready to proceed to construction with sufficient detail to support and justify the expedited review process;
- (4) that the applicant will comply with Disadvantaged Business Enterprise "fair share" goals in procuring the project contractors and subcontractors unless expressly waived by the terms of the capitalization grant;
- (5) that applications have been filed and/or granted for all applicable local, state and federal permitting, licensing and registration permits, licenses, registrations and other legal authorizations required for the construction and operation of the project; and
- (6) that provides the status of any environmental review activities performed in accordance with or in response to the environmental review requirements set forth in §371.35 of this title (relating to Required Environmental Review and Determinations).

§371.205. Expedited Review of the Applications by the Executive Administrator.

The executive administrator will commence a review for administrative completeness as soon as practicable upon receipt of the application and may request any modifications or additional information to ensure consistency with the requirements of this subchapter and the terms of the capitalization grant. The applicant shall respond to any request for modification or for additional information within the timeframe specified in the executive administrator's request. Once the application has been deemed to be administratively complete, the executive administrator will commence a technical review of the project to ensure that it is eligible for processing under this subchapter and that the project is feasible. When this technical review is complete, the application shall be scheduled for board consideration.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2009.

TRD-200901211

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Effective date: April 15, 2009

Proposal publication date: January 30, 2009

For further information, please call: (512) 463-8061



CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

The Texas Water Development Board (TWDB or Board) adopts amendments to §375.2 and adopts new Subchapter D, §§375.400 - 375.408, regarding the Clean Water State Revolving Fund. All of the rules are adopted without changes to the proposed text except §375.403, which is adopted with a change to the proposed text, as published in the January 30, 2009, issue of the *Texas Register* (34 TexReg 520).

The adopted rules provide for an expedited financial application review, processing and closing process for applications which have been filed in response to special federal capitalization grants for emergency events, economic recovery efforts and similar special initiatives. The purpose of these adopted rules is to provide the Board with appropriate flexibility in complying with terms and conditions required for special capitalization grants in order to ensure that the funding is fully utilized to the benefit of the state's political subdivisions.

The Board received comments from Connie Ripley, President of the Don't Empty Lake Travis Association, on behalf of the Association (hereinafter the "commenter").

§375.2

The Board adopts amendments to 31 TAC §375.2(17) relating to the term "construction" to more closely track the definition of "construction" found in §212(1) of the Federal Water Pollution Control Act, as amended. In addition to benefitting the administration of the traditional Clean Water State Revolving Fund by expanding the scope of eligible projects, the amended definition will expand the scope of projects eligible for special capitalization grant funding.

The Board adopts amendments to 31 TAC §375.2(67) relating to the term "treatment works" to more closely track the definition of "treatment works" found in §212(2)(A) and (B) of the Federal Water Pollution Control Act, as amended, or as incorporated by §15.602, Water Code. The revisions to the Board's definition of "treatment works" will explicitly allow funding for the preventing, abating, reducing, storing, treating, separating, or disposing of storm water runoff and waste combined in storm water and sanitary sewer systems, the type of projects that often arise in response to emergency events.

§375.400

The Board adopts new §375.400 (relating to Purpose) in order to make clear that the provisions of Subchapter D are to be interpreted and applied in a manner that fully supports whatever

flexibility is necessary and appropriate to implement the terms and conditions of any special capitalization grant.

The commenter states that "whatever flexibility" suggests that other rules and processes be improperly disregarded in order to use or lose funds. Please clarify that this in no way diminishes the existing programs or reviews. Being flexible should not mean having to ignore existing constraints that are based on learned experience. The Board makes no changes because the proposed rule recognizes that the flexibility is limited by existing constraints. Section 375.400 as proposed states that the flexibility is specified "as necessary and appropriate to the terms of that capitalization grant or the requirements of any capitalization grant agreement to the greatest extent necessary." No change is made pursuant to this comment.

§375.401

The Board adopts new §375.401 (relating to Definitions) to define the terms "capitalization grant", "emergency event" and "ready to proceed." The term "capitalization grant" means a capitalization grant funded by special appropriation by the United States Congress for any special purpose, including, but not limited to, responding to emergency events and supporting economic recovery initiatives. The term "emergency event" shall be broadly defined to include natural disasters such as hurricanes, tornadoes, flooding events, prolonged drought conditions, earthquakes and other natural disasters as well as man-made disasters, acts of terrorism or enemy attacks that result in damage to or the impairment of publicly-owned wastewater collection, distribution and treatment works. The term "ready to proceed" means that a project has all of the approvals required in this chapter needed in order to commence construction.

The commenter states, regarding §375.401(3), that the term "approvals" is ambiguous, and to please clarify. Also, the TWDB should provide a comprehensive list of what it expects is necessary in order to avoid misunderstandings. The Board disagrees because the rule is unambiguous that a project is ready to proceed if it has all of the approvals required in Chapter 375 needed in order to commence construction. The Board purposely referenced the entire chapter, and did not specifically list in this definition all the requirements to commence construction, because the requirements for each stage of the financial assistance process are found throughout the chapter, and any attempt to include a list of those requirements in this rule could be confusing and would not serve to clarify the definition. No change is made pursuant to this comment.

§375.402

The Board adopts new §375.402 (relating to Eligibility Requirements) to define those projects and activities that are eligible for this expedited application review, processing and closing process. All projects must be listed on an intended use plan for the Clean Water State Revolving Fund program and must further be related to the specific purposes of a special capitalization grant being implemented by the EPA or other federal agency through a capitalization grant agreement executed by and between the Board and the federal agency. Activities which are eligible for funding are broadly defined as any activities, including but not necessarily limited to, collection and distribution system upgrades, equipment upgrades and replacements, treatment system rehabilitation and improvements and other related activities that will address damage to or impairment of wastewater collection, distribution and treatment facilities.

§375.403

The Board adopts new §375.403 (relating to Intended Use Plan) to provide procedures to develop an IUP as necessary to implement any special capitalization grant. The intended use plan will identify those projects anticipated to receive assistance from funds available under the capitalization grant. The list of projects in the IUP, which shall be presented by priority ranking, may also serve as a project priority list if required by the capitalization grant. The adopted rule contains a nonsubstantive technical correction from the proposed rule in that "executive director" is replaced with "executive administrator" in subsection (f).

The commenter states, regarding §375.403(f), that it should identify that an expedited review will nonetheless be presented to the Board as contemplated in §371.406. The Board disagrees. Section 375.403(f) as proposed already requires approval by the Board of any revised process used to expedite the rating process. Section 375.406, on the other hand, has to do with action by the Board to commit funding to individual applications, rather than the process by which those applications are ranked prior to processing the applications for consideration by the Board. No change is made pursuant to this comment.

§375.404

The Board adopts new §375.404 (relating to Applicable Rules) to provide that the rules governing applications for funding from the state's Drinking Water State Revolving Fund will be generally applicable to an application for expedited review, processing and closing under this subchapter, except as provided otherwise in this subchapter.

§375.405

The Board adopts new §375.405 (relating to Review of Applications by Executive Administrator) to explain the manner in which the staff intends to review and process the applications seeking expedited review. The executive administrator shall review each application to determine whether it is administratively complete and shall request any additional information needed in order to process the application as soon as practicable. Such information shall be provided within the timeframe specified by the executive administrator. Once administratively and technically complete, the application will be scheduled for Board consideration.

§375.406

The Board adopts new §375.406 (relating to Formal Action by the Board) to specify the manner in which applications undergoing expedited review and processing under this subchapter will be considered by the Board. The executive administrator shall present the application to the Board as soon as practicable after the application has been deemed administratively complete, the project has been deemed eligible for funding and the project has been deemed to be technically feasible.

The applicant and other interested parties known to the Board will be notified of the time and place of the Board meeting prior to the meeting and arguments both for and against the issuance of the loan commitment may be made at that time. At the conclusion of the meeting, the Board will have the authority to approve, disapprove, amend or continue consideration of the application. The Board may only approve the application if it finds that the revenue and/or taxes pledged by the applicant will be sufficient to meet any loan obligations assumed by the applicant. The commitment will specify the applicable commitment period, after which time the commitment expires.

The commenter states, regarding §375.406(a), that the provision ensuring evidence and arguments are heard should be mandatory. The Board disagrees with this comment because there is no requirement, statutory or otherwise, that the Board hear evidence and arguments or hold a contested case hearing on an application for financial assistance. The Board, however, considers applications for funding in open meetings where the public may present comments. No change is made pursuant to this comment. §375.407.

The Board adopts new §375.407 (relating to Lending Rates) to define pertinent terms and to establish the procedures that will be used to set lending rates for projects consistent with the terms of a special capitalization grant. In establishing the procedure to be used to set rates for applications processed under this subchapter, the executive administrator shall consider factors that include, but are not necessarily limited to, the appropriate market rate for the borrower, the amount of adjustment from the market interest rate that may be appropriate for the borrower, any interest rate adjustment to the market rate for the borrower that may be required in order to determine the loan interest rate, and the manner in which that loan interest rate should be applied to the proposed principal schedule. In terms of timing, the executive administrator will set rates for loans on a date that is five (5) business days prior to the adoption of the political subdivision's bond ordinance or resolution or the execution of a loan agreement; and not more than 45 days before the anticipated closing of the loan from the Board. After 45 days from the assignment of the interest rate on the loan, the rates may only be extended with the executive administrator's approval.

§375.408

The Board adopts new §375.408 (relating to Waiver of Rules) to allow the provisions of this chapter to be waived or modified by the executive administrator as necessary and appropriate to implement the terms of the special capitalization grant or to comply with the conditions of the capitalization grant agreement. The Board must find that all waivers or modifications of this subchapter are necessary and appropriate to implement the terms of the special capitalization grant or to comply with the conditions of the capitalization grant agreement prior to approving an application for financial assistance using this expedited review, processing and closing process.

The commenter states, regarding §375.408(a), that in accepting special capitalization grants and in negotiating their terms, the Board should clearly be an active participant and act separately on each item requiring a waiver of any portion of this subchapter. The Board makes no changes to the rule as proposed. The proposed rule includes a requirement that the Board must find that all waivers or modifications of this subchapter are necessary and appropriate to implement the terms of the special capitalization grant or to comply with the conditions of the capitalization grant agreement prior to approving an application for financial assistance using this expedited review, processing and closing process. The Board is an active participant insofar as the Board provides direction to the executive administrator through its rules and through its discussions at Board meetings. The executive administrator is expected to coordinate closely with the Board in modifying policies and procedures. The coordination will be in open meeting. The executive administrator is statutorily authorized to perform the Board's administrative functions with the direction of the Board.

The commenter states, regarding §375.408(b), that any finding by the Board to support any waiver should require the Board

specify and explain its reasons and findings. It is current practice that the Board bases its findings on sufficient reasons. The reasons for the Board's findings are a matter of record, including the Executive Administrator's memoranda to the Board, and are listed in the Board's Resolutions that are issued to make commitments to financial assistance. No change is made pursuant to this comment.

SUBCHAPTER A. GENERAL PROVISIONS

DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §375.2

Statutory authority: Texas Water Code §6.101 and §15.605.

Cross reference to statute: Texas Water Code, Chapter 15, Subchapter J.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2009.

TRD-200901212

Kenneth L. Petersen

General Counsel

Texas Water Development Board

Effective date: April 15, 2009

Proposal publication date: January 30, 2009

For further information, please call: (512) 463-8061



SUBCHAPTER D. PROVISIONS RELATING TO APPLICATIONS FOR FINANCIAL ASSISTANCE FILED IN RESPONSE TO SPECIAL CAPITALIZATION GRANTS; EXPEDITED REVIEW, PROCESSING AND LOAN CLOSING REQUIREMENTS

31 TAC §§375.400 - 375.408

Statutory authority: Texas Water Code §6.101 and §15.605.

Cross reference to statute: Texas Water Code, Chapter 15, Subchapter J.

§375.403. *Intended Use Plan.*

(a) The board shall prepare an intended use plan to meet the requirements of the capitalization grant. The intended use plan (IUP) will identify those projects anticipated to receive assistance from funds available under the capitalization grant. The list of projects in the IUP, which shall be presented by priority ranking, may also serve as a project priority list if required by the capitalization grant.

(b) The process for listing projects in the intended use plan shall be as follows.

(1) As necessary, the executive administrator will provide written notice and solicit project information from entities desiring to receive funding commitments. The notice shall include the form(s) to be used to submit information needed to rate the project and the deadline by which such rating information must be submitted in order for the project to be rated and included in the intended use plan. The required project information shall include, at a minimum, the following:

(A) the information needed to rate the project;
(B) a description of the proposed facilities;
(C) a description of any required permits, licenses, registrations and other legal authorizations, including any projected effluent limitations that may be required in any permit or registration issued by the Texas Commission on Environmental Quality (TCEQ) or the EPA;

(D) the estimated total project cost;
(E) an estimated schedule for construction of the proposed project;

(F) whether the applicant is under enforcement by the TCEQ or the EPA;

(G) for those potential applicants with existing populations of 25,000 or fewer, information regarding whether the community is eligible to receive funding as a disadvantaged community as defined in §375.19 of this chapter (relating to Financial assistance for projects benefiting disadvantaged communities); and

(H) such other information as may be requested by the executive administrator.

(2) The required information must be submitted not later than the deadline specified in the written notice.

(c) Subsequent to adoption of an intended use plan, the nature of a proposed project included in the intended use plan may change with written approval of the executive administrator consistent with the terms of the capitalization grant.

(d) If any changes are proposed to the project which would result in a change to the rating score, the project must be re-ranked in the intended use plan. In this case, the availability of funds will be determined based on the revised rating score.

(e) The intended use plan will be presented for adoption to the board at a scheduled meeting at which time the board will receive public comment before adopting the plan. Notice of this meeting shall be afforded to the public, the applicant and other known, interested parties prior to the Board meeting at which the intended use plan will be considered for adoption.

(f) The executive administrator may revise the rating process established in §375.16 of this chapter (relating to Rating Process) for those applicants seeking an expedited review under this subchapter provided that this revised process is consistent with the capitalization grant and is approved by the board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 26, 2009.
TRD-200901213

Kenneth L. Petersen
General Counsel
Texas Water Development Board
Effective date: April 15, 2009
Proposal publication date: January 30, 2009
For further information, please call: (512) 463-8061

◆ ◆ ◆
TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER G. SPECIAL APPRAISAL

34 TAC §9.2005

The Comptroller of Public Accounts adopts an amendment to §9.2005, concerning wildlife use requirement, without changes to the proposed text as published in the January 23, 2009, issue of the *Texas Register* (34 TexReg 406).

Subsection (f)(2) is amended to correct the year from 2002, which was intended to be 2009.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Tax Code, §23.252, which requires the Texas Parks and Wildlife Department to develop, and the comptroller to adopt, rules governing the qualification of agricultural land used for wildlife management.

The amendment implements Tax Code, Chapter 23, Subchapter D, Special Appraisal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 25, 2009.

TRD-200901176

Ashley Harden
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: April 14, 2009
Proposal publication date: January 23, 2009
For further information, please call: (512) 475-0387

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 25 TAC §157.133(a)(3)

Support (Level III) Stroke Facility Criteria

Support (Level III) Stroke Facilities (SSFs) - Provides resuscitation, stabilization and assessment of the stroke victim and either provides the treatment or arranges for immediate transfer to a higher level of stroke care either a Comprehensive (Level I) Stroke Center or Primary (Level II) Stroke Center; provides ongoing educational opportunities in stroke related topics for health care professionals and the public; and implements stroke prevention programs.

A. Stroke Program	
<p>1. Identified Stroke Medical Director who:</p> <ul style="list-style-type: none"> a. Is actively credentialed by the hospital to provide stroke care b. Is charged with overall management of the stroke care provided by the hospital c. Shall have the authority and responsibility of clinical oversight of the stroke program. This is accomplished through mechanisms that may include, but are not limited to: credentialing of staff that provide stroke care; providing stroke care; development of treatment protocols; cooperating with nursing administration to support the nursing needs of the stroke patient; coordinating the performance improvement peer review; and correcting deficiencies in stroke care. <ul style="list-style-type: none"> i. There shall be a defined job description ii. There shall be an organizational chart delineating the Stroke Medical Director's role and responsibility iii. The Stroke Medical Director shall be credentialed by the hospital to participate in the stabilization and treatment of stroke patients using criteria such as board-certification/board eligibility; stroke continuing medical education; compliance with stroke protocols, and participation in the Stroke Process Improvement (PI) program. d. The Stroke Medical Director shall participate in a leadership role in the hospital and community. 	E
<p>2. Identified Stroke Nurse Coordinator who:</p> <ul style="list-style-type: none"> a. Is a Registered Nurse b. Has successfully completed and is current in Advanced Cardiac Life Support c. Has successfully completed 8 hours of stroke continuing education in the last 12 months d. Has successfully completed National Institutes of Health Stroke Scale (NIHSS) by an approved certification program or a DSHS (Department of State Health Services) approved equivalent e. Has the authority and responsibility to monitor the stroke patient care from Emergency Department (ED) admission through stabilization and transfer to a higher level of care or admission <ul style="list-style-type: none"> i. There shall be a defined job description ii. There shall be an organizational chart delineating roles and responsibilities iii. The Stroke Nurse Coordinator shall have a minimum of 8 hours of continuing education per 12 months. iv. The Stroke Nurse Coordinator shall be current in NIHSS certification 	E

v. The Stroke Nurse Coordinator shall receive education and training designed for his/her role which provides essential information on the structure, process, organization and administrative responsibilities of a PI program to include stroke outcomes and performance improvement	
3. An identified Stroke Registrar who: <ul style="list-style-type: none"> a. Has appropriate training in stroke chart abstraction b. Has appropriate training in stroke registry data entry c. Has the ability to provide stroke registry data to the PI program 	D
4. Written protocols, developed with approval by the hospital's medical staff: <ul style="list-style-type: none"> a. Stroke Team Activation b. Identification of stroke team responsibilities during the stabilization of a stroke patient c. Triage, admission and transfer criteria of stroke pts. d. Protocols for the administration of thrombolytics and other approved stroke treatments e. Stabilization and treatment of stroke patients f. Facility capability for stroke patients will be provided to the Regional Advisory Council 	E
B. PHYSICIAN SERVICES	
1. Emergency Medicine – this requirement may be fulfilled by a physician credentialed by the hospital to provide emergency medical services <ul style="list-style-type: none"> a. Any emergency physician who provides care to the stroke patient must be credentialed by the Stroke Medical Director to participate in the stabilization and treatment of stroke patients (i.e. current board certification/eligibility, compliance with stroke protocols and participation in the stroke PI program). b. An average of 8 hours per year of stroke related continuing medical education c. An Emergency Medicine Physician providing stroke coverage must be current in Advanced Cardiac Life Support (ACLS). d. The emergency physician representative to the multidisciplinary committee that provides stroke coverage to the facility shall attend 50% or greater of multidisciplinary and peer review stroke committee meetings. 	E
2. Radiology - Capability to have computerized topography (CT) report read within 45 minutes of patient arrival	E
3. Primary Care Physician – the patient's primary care physician should be notified at an appropriate time.	D
C. NURSING SERVICES (all patient care areas)	
1. All nurses caring for stroke patients throughout the continuum of care have ongoing documented knowledge and skills in stroke nursing for patients of all ages to include: <ul style="list-style-type: none"> a. Stroke specific orientation b. Annual competencies c. Continuing annual education 	E
2. Written standards on nursing care for the stroke patients for all units caring for stroke patients shall be implemented	E
3. 100% of nurses providing initial stabilization care for stroke patients shall be competent in: <ul style="list-style-type: none"> a. NIHSS (competency or certification) 	E

b. Dysphagia screening	
c. Thrombolytic therapy administration	
D. EMERGENCY DEPARTMENT	
1. The published physician on-call schedule must be available in the Emergency Department (ED).	E
2. A physician with special competence in the care of the stroke patient who is on-call (if not in-house 24/7) shall be promptly available within 30 minutes of request from outside the hospital and on patient arrival from inside the hospital.	E
3. The physician on duty or on-call to the ED shall be activated on EMS communication with the ED or after a primary assessment of patients who arrive to the ED by private vehicle or for patients who are exhibiting signs and symptoms of an acute stroke.	E
4. A minimum of one and preferably two registered nurses who have stroke training shall participate in the initial stabilization of the stroke patient. Nursing staff required for initial stabilization is based on patient acuity and "last known well time".	E
5. 100% of the nursing staff have successfully completed and hold current credentials and competencies in: <ul style="list-style-type: none"> a. ACLS (certification) b. NIHSS (competency or certification) c. Dysphagia Screening (competency) d. Thrombolytic therapy administration (competency) 	
6. Nursing documentation for stroke patients is systematic and meets stroke registry guidelines.	E
7. Two-way communication with all pre-hospital emergency medical services.	E
8. Equipment and services for the evaluation and stabilization of, and to provide life support for, critically ill stroke patients of all ages shall include, but not limited to: <ul style="list-style-type: none"> a. Airway control and ventilation equipment b. Continuous cardiac monitoring c. Mechanical ventilator d. Pulse oximetry e. Suction devices f. Electrocardiograph-oscilloscope-defibrillator g. Supraglottic airway management device h. All standard intravenous fluids and administration devices i. Drugs and supplies necessary to provide thrombolytic therapy 	E
E. RADIOLOGICAL CAPABILITY	
1. 24-hour coverage by in-house technician	D
2. Computerized tomography	E
F. CLINICAL LABORATORY SERVICE	
1. 24-hour coverage by in-house lab technician	D
2. Drug and alcohol screening	D
3. Call-back process for stroke patients within 30 minutes	E
4. Bedside glucose	
5. Standard analyses of blood, urine and other body fluids, including micro-sampling	
6. Blood typing and cross-matching	
7. Coagulation studies	
8. Blood gases and pH determination	

G. PERFORMANCE IMPROVEMENT		
1. A facility must show at least 6 months worth of audits for all qualifying stroke patients with evidence of "loop closure" on identified issues.		E
2. Minimum inclusion criteria: <ul style="list-style-type: none">a. All stroke activationsb. All stroke admissionsc. All transfers outd. All readmissionse. All stroke deaths		
3. An organized Stroke PI program established by the hospital <ul style="list-style-type: none">a. Audit charts for appropriateness of stroke care		
<ul style="list-style-type: none">b. Documented evidence of identification of all deviations from standards of stroke carec. Documentation of actions taken to address identified issuesd. Documented evidence of participation by the Stroke Medical Directore. Morbidity and mortality review including decisions by the Stroke Medical Director as to whether or not standard of care was metf. Documented resolutions "loop closure" of all identified issues to prevent future reoccurrencesg. Special audit for all stroke deaths and other specified cases, including complicationsh. Multidisciplinary hospital Stroke PI Committee		
4. Multidisciplinary stroke conferences, continuing education and problem solving to include documented nursing and pre-hospital participation		
5. Feedback regarding stroke patient transfers-out from the ED and in-patient units shall be obtained from receiving facilities		D
6. Stroke Registry – data shall be accumulated and downloaded to the receiving agencies		D
7. Participation with the regional advisory council's (RAC) PI program, including adherence to regional protocols, review of pre-hospital stroke care, submitting data to the RAC as requested to include such things as summaries of transfer denials and transfers to hospitals outside the RAC.		E
8. Times of and reasons for diversion must be documented and reviewed by the Stroke PI program.		E
H. REGIONAL STROKE SYSTEM		
1. Must participate in the regional stroke system development per RAC requirements.		E
2. Participates in the development of RAC transport protocols for stroke patients, including destination and facility capability		
I. TRANSFERS		
1. A process to expedite the transfer of a stroke patient to include such things as written transfer protocols, written/verbal transfer agreements, and a regional stroke transfer plan for patients needing a higher level of care (Comprehensive or Primary Stroke Center)		E
2. A system for establishing an appropriate landing zone in close proximity to the hospital (if rotor wing services are available)		E
J. PUBLIC EDUCATION/STROKE PREVENTION		
1. A public education program to address: <ul style="list-style-type: none">a. Signs and symptoms of a strokeb. Activation of 911c. Stroke risk factors		E

d. Stroke prevention	
2. Coordination and/or participation in community/RAC stroke prevention activities	E
K. TRAINING PROGRAMS	
1. Formal programs in stroke continuing education provided by hospital for staff based on needs identified from the Stroke PI program for: <ul style="list-style-type: none"> a. Staff physicians b. Nurses c. Allied health personnel, including mid-level providers 	D

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Alamo Regional Mobility Authority

Request for Qualifications, Design/Build Comprehensive Development Agreement

The Alamo Regional Mobility Authority ("Alamo RMA"), a political subdivision, is soliciting statements of interest and qualifications from entities interested in pursuing the development of the US 281 North at Loop 1604 Interchange Project ("the Project") through a design/build comprehensive development agreement ("D/B Agreement"). The Project is generally described as the addition of four direct connections between US 281 North and Loop 1604, constructed over the existing frontage roads and mainlanes. Some adjustments to US 281 North and Loop 1604 mainlanes, frontage roads, and ramps may be required to accommodate the connections. The entity selected for the Project, if any, will be responsible for the design and construction of the Project through a Design/Build Agreement. The Alamo RMA anticipates utilizing, in part, funds allocated through the American Recovery and Reinvestment Act of 2009 for this Project and, therefore, will be required to meet all stipulations that come with those funds.

The request for qualifications will be available March 27, 2009. Copies may be obtained from the Alamo RMA website at <http://www.alamorma.org/>, or by contacting the Alamo RMA Office at (210) 495-5256. Periodic updates, addenda, and clarifications will be posted on the Alamo RMA website; and interested parties are responsible for monitoring the website accordingly. There will be a pre-proposal conference for interested parties at the Alamo Area Council of Governments, 8700 Tesoro Drive, Suite 100, San Antonio, Texas 78217 (1st Floor Conference Room) at 1:30 p.m. Central Time on April 7, 2009. Attendance at the pre-proposal conference is not a condition of submitting a proposal. Final responses must be received in the offices of the Alamo RMA by or before 4:00 p.m. Central Time April 28, 2009, to be eligible for consideration.

Each proposing entity will be evaluated based on the criteria and process set forth in the RFQ.

Questions concerning this RFQ may be submitted via e-mail to Patrick Irwin, P.E., PIrwin@AlamoRMA.org or in writing to: Alamo RMA, c/o Patrick Irwin, P.E., 1222 N. Main Avenue, Suite 1000, San Antonio, TX 78212. All questions must be received by 5:00 p.m. Central Time on April 21, 2009.

TRD-200901285
Terry M. Brechtel
Executive Director
Alamo Regional Mobility Authority
Filed: April 1, 2009

Office of the Attorney General

Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State

may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health and Safety Code.

Case Title and Court: *State of Texas v. Deer Creek Ranch Water Company, LLC, and Deer Creek Ranch, Inc.* Cause No. D-1-GV-06-002067, in the 353rd Judicial District Court, Travis County, Texas.

Nature of Defendant's Operations: Defendants own and operate a public water system which provides drinking water to an area near Dripping Springs, in Travis County. On several occasions, the water system could not supply water to keep pace with demand and its customers were left without water service as a result. In addition, the Defendants violated an Agreed Order issued by the TCEQ by failing to increase the capacity of the system, hire an appropriately licensed operator, failing to file water quality reports, and other violations.

Proposed Agreed Judgment: The Agreed Final Judgment orders Defendants to pay civil penalties, and attorney's fees to the State. Defendants agree to pay Plaintiff \$140,000.00, in civil penalties, \$80,000.00 of which will be deferred on the condition that the Defendants comply with the Judgment and all relevant statutes and rules for five years. The Defendants agree to pay attorney's fees to the State in the amount of \$20,000.00. The Defendants will also cease collection of a customer surcharge.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Jane E. Atwood, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For more information regarding this publication, contact Cindy Hodges, Agency Liaison, at (512) 936-1841.

TRD-200901219
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: March 27, 2009

Brazos Valley Council of Governments

ORCA Meeting Press Release

Public Hearing on CDBG Disaster Recovery Funds Method of Distribution.

The Brazos Valley Council of Governments (BVCOG) will host two public hearing opportunities to solicit comments for revision of the cur-

rent method of distribution for Community Development Block Grant (CDBG) disaster recovery funds related to Hurricane Ike. BVCOG will provide a suggested method of distribution that will recommend apportioning funds totaling \$8,952,164.30 for housing and community infrastructure within the BVCOG region.

Two identical public hearings will be held: Thursday, April 2, 2009 at 2:00 p.m. and Friday, April 3, 2009 at 2:00 p.m. at The Center for Regional Services, 3991 East 29th Street, Bryan, Texas.

The public is invited to attend either hearing and/or provide comments to BVCOG. Written comments may be submitted to lmcgull@bvcog.org, by fax to (979) 595-2810, or by mail to: Linda McGill, Ike Recovery Funding Distribution, Brazos Valley Council of Governments, P.O. Drawer 4128, Bryan, Texas 77805.

BVCOG will provide for reasonable accommodations for persons attending BVCOG functions. Requests from persons needing special accommodations should be received by BVCOG staff 24 hours prior to a function. The public hearing will be conducted in English and requests for language interpreters or other special communication needs should be made at least two working days prior to a function. Please call (979) 595-2800 for assistance.

TRD-200901263

Tom Wilkinson, Jr.

Executive Director

Brazos Valley Council of Governments

Filed: March 31, 2009

Capital Area Rural Transportation System

Schedule Change

Statewide Purchase of Cutaway Buses

The public bid opening for this procurement has been set back to May 13, 2009.

The Capital Area Rural Transportation System (CARTS) is requesting bids for 22 and 25 foot cutaway buses on behalf of all Rural Transit Districts in Texas participating in this joint procurement. It is anticipated that 120 - 150 buses will be purchased under this procurement.

If you wish to receive an electronic copy of the bid document send a request to:

TexasBusBuy@RideCARTS.com

TRD-200901220

Dave Marsh

General Manager

Capital Area Rural Transportation System

Filed: March 27, 2009

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of March 20, 2009, through March

26, 2009. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on April 1, 2009. The public comment period for this project will close at 5:00 p.m. on May 1, 2009.

FEDERAL AGENCY ACTIONS:

Applicant: David Fortenberry; Location: The project is located along the Gulf Intracoastal Waterway in the Canal City Subdivision in Gilchrist, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Caplen, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 357364; Northing: 3267826. Project Description: The applicant proposes to fill 19.67 acres of waters of the United States, specifically tidal salt marsh wetlands adjacent to man-made boat canals, for the purpose of home building on residential lots. The applicant also proposes to install 7,020 linear feet of bulkhead along the edge of lots. No excavation or dredging is required for this project. As compensatory mitigation, the applicant proposes to avoid home building on 39 lots, preserving 7.47 acres of tidal salt marsh, and to create 2.03 acres of tidal salt marsh, within two separate mitigation sites. In addition, the applicant proposes to plant approximately 0.97 acres of marsh fringe in front of the proposed 7,020 linear feet of bulkhead. CCC Project No.: 09-0120-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-01609 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Port of Harlingen Authority; Location: The project is located approximately 4 miles east of Highway 77 on FM 106, along the Arroyo Colorado, in Harlingen, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Rio Hondo, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 14; Easting: 640328; Northing: 2899330. Project Description: The applicant proposes to construct a pile supported dock for the purpose of unloading sand and other materials from barges for use at an existing concrete facility. The project involves excavating a portion of the bank to a less steep slope, construction of a caliche road to the proposed dock, and shoreline stabilization consisting of a bulkhead and riprap. The applicant proposes to construct a roadway in an upland portion of the shoreline that would lead to a 30- by 50-foot concrete slab unloading dock. Along the shoreline, the applicant proposes to construct a steel sheet-pile bulkhead that would extend approximately 35 feet along the Mean Low Tide line, and back into the existing bank. In front of the bulkhead, the applicant would place approximately 300 cubic yards of concrete riprap. Behind the bulkhead, the applicant would place approximately 200 cubic yards of caliche for the proposed roadway. CCC Project No.: 09-0122-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-01218 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Aransas County Navigation District; Location: The project is located in Aransas Bay southeast of the intersection of Main Street and Water Street in Rockport, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Rockport, Texas. Approximate UTM Coordinates in NAD 27 (meters):

Zone 14; Easting: 691949; Northing: 3101082. Project Description: The applicant proposes to construct an L-shaped stone/rock breakwater approximately 870 feet long, 32 feet wide at the base, and 6.75 feet high. A 6.5-foot-wide concrete sidewalk with handrails and lights would be constructed on top of the breakwater. The breakwater would be built in two sections - a 320-foot-long section that would be constructed from land and a 570-foot-long section that would be constructed from barges. The stone/rock for the breakwater would be set on geotextile material to minimize turbidity. The project would fill approximately 0.85 acre of bay bottom with approximately 7,500 cubic yards of stone/rock and 500 cubic yards of concrete and brick rubble. An existing fishing pier at the site would be demolished to make room for the breakwater. No seagrass is reported to be present at the proposed site. CCC Project No.: 09-0124-F1. Type of Application: U.S.A.C.E. permit application #SWG-2003-02700 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Citgo Refining and Chemicals; Location: The project site is located along the Corpus Christi Ship Channel, at Citgo Dock 2 of the Citgo Refining and Chemicals facility located at 1802 Nueces Bay Boulevard in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Corpus Christi, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 655050; Northing: 3077750. Project Description: The applicant proposes to repair an area of approximately 600 feet adjacent to an existing roadway and the shoreline along the Corpus Christi Ship Channel within the Inner Harbor. The proposed work is needed to maintain the integrity of the existing roadway and the safety of vehicular traffic traveling adjacent to the shoreline. The repairs would consist of placing approximately 4,900 cubic yards of fill materials along the edge of the roadway and the shoreline, with articulated concrete mats placed on top of the fill to hold it in place. The width of the material to be placed in the water varies from 40 feet to 140 feet. Approximately 1.5 acres of jurisdictional waters would be filled by the proposed work. Water depths at the project site vary from -4 to -8 feet mean low tide. CCC Project No.: 09-0125-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-01132 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Neumin Production Company; Location: The project is located on State Tract (ST) 26 in Lavaca Bay, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: POINT COMFORT, Texas. Approximate UTM Coordinates for the proposed well location in NAD 83 (meters): Zone 14; Easting: 740592; Northing: 3170069. Project Description: The applicant proposes to hydraulically dredge a proposed approximate 85- by 150-foot access channel in Lavaca Bay to a depth of -7.1 feet Mean Lower Low Water (MLLW). The proposed access channel will connect to another access channel authorized under Department of the Army Permit No. 24272. In addition, the applicant proposes to hydraulically dredge a 176- by 345-foot work basin in ST 26 to a depth of -7.1-ft MLLW for the proposed ST 26, Well No. 8 surface location structure. This will result in the excavation of approximately 8,015 cubic yards of material which will be pumped into confined Port of Port Lavaca Dredged Material Placement Areas. CCC Project No.: 09-0130-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-01445 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad

Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Neumin Production Company; Location: The project is located in State Tract (ST) 38 in Lavaca Bay, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Point Comfort, Texas. Approximate UTM Coordinates for the proposed well location in NAD 83 (meters): Zone 14; Easting: 740998; Northing: 3169795. Project Description: The applicant proposes to hydraulically dredge a proposed approximate 80- by 1,420-foot access channel in Lavaca Bay to a depth of -7.1 feet Mean Lower Low Water (MLLW). The proposed access channel will connect to another access channel authorized under Department of the Army Permit No. 24272. In addition, the applicant proposes to hydraulically dredge a 171-foot by 435-foot work basin in ST's 26 and 38 to a depth of -7.1 feet MLLW for the proposed ST 38, Well No. 7 surface location structure. Excavation from the proposed access channel and work basin will result in approximately 11,593 cubic yards of material which will be pumped into confined Port of Port Lavaca Dredged Material Placement Areas. CCC Project No.: 09-0131-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-01446 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200901260

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: March 31, 2009

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/06/09 - 04/12/09 is 18% for Consumer ¹/Agricultural/Commercial ²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/06/09 - 04/12/09 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200901261

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 11, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 11, 2009**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: City of Amherst; DOCKET NUMBER: 2008-1968-MLM-E; IDENTIFIER: RN105649115; LOCATION: Amherst, Lamb County; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 Texas Administrative Code (TAC) §111.201 and §330.15(c) and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the general prohibition on outdoor burning and by failing to prevent the unauthorized disposal of municipal solid waste (MSW); PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Michael Graham, (806) 796-7092; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(2) COMPANY: City of Bardwell; DOCKET NUMBER: 2008-1930-MWD-E; IDENTIFIER: RN101721199; LOCATION: Ellis County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013675001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for dissolved oxygen (DO), five-day biochemical oxygen demand (BOD₅), and total suspended solids (TSS); and 30 TAC §305.125(17) and TPDES Permit Number WQ0013675001, Sludge Provisions, by failing to submit the annual sludge report; PENALTY: \$2,335; ENFORCEMENT COORDINATOR: Jennifer Graves, (956)

425-6010; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Bluff Manufacturing, Inc.; DOCKET NUMBER: 2009-0134-AIR-E; IDENTIFIER: RN105491757; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: metal fabrication and manufacturing; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization for a surface coating and dry abrasive cleaning operation; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 898-3838; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Cacharel Texas Hawaii, Limited; DOCKET NUMBER: 2008-1648-MWD-E; IDENTIFIER: RN101202836; LOCATION: Tarrant County; TYPE OF FACILITY: wastewater treatment system and disposal site; RULE VIOLATED: 30 TAC §30.331(b) and §30.350(d), by failing to have a properly certified operator operating the facility; 30 TAC §305.125(1) and TPDES Permit Number WQ0014046001, Sludge Provisions, Section 1, B.1, by failing to comply with all permit conditions; 30 TAC §305.125(1) and TPDES Permit Number WQ0014046001, Effluent Limitations and Monitoring Requirements Section B, by failing to comply with all permit conditions; 30 TAC §319.5(a) and TPDES Permit Number WQ0014046001, Effluent Limitations and Monitoring Requirements Section B, by failing to collect samples and measurements of the effluent; 30 TAC §305.125(1) and TPDES Permit Number WQ0014046001, Special Provisions Number 10, by failing to monitor the accumulation of solids in the septic tank; 30 TAC §305.125(1) and TPDES Permit Number WQ0014046001, Special Provisions Number 6, by failing to comply with permit conditions; 30 TAC §305.125(17) and TPDES Permit Number WQ0014046001, Sludge Provisions, by failing to submit the annual sludge report; and 30 TAC §305.125(1) and TPDES Permit Number WQ0014046001, Operational Requirements Number 10.f., by failing to keep the management records for all sludge removed from any wastewater treatment process; PENALTY: \$23,504; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: CLEMSA LUMBER COMPANY; DOCKET NUMBER: 2008-1787-IWD-E; IDENTIFIER: RN100211143; LOCATION: Pollok, Angelina County; TYPE OF FACILITY: sawmill with wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0004234000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for total aluminum; PENALTY: \$1,290; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: City of Corpus Christi; DOCKET NUMBER: 2008-1971-PST-E; IDENTIFIER: RN100711415; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: automotive maintenance shop and refueling station; RULE VIOLATED: 30 TAC §334.76(2), by failing to take immediate action to prevent any further releases of the regulated substance into the environment, including shutting down the leaking underground storage tank (UST) if necessary; and 30 TAC §334.72(1), by failing to report to the commission, the discovery of released regulated substances; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(7) COMPANY: Diamond Shamrock Refining Company, L.P.; DOCKET NUMBER: 2008-0738-AIR-E; IDENTIFIER: RN100210517; LOCATION: Moore County; TYPE OF FACILITY:

petroleum refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 9708/PSD-TX-861M2, Special Condition (SC) Number 2, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(b)(1)(G) and THSC, §382.085(b), by failing to include the compound descriptive type of all compounds released during the emissions event on the final emissions event report; PENALTY: \$8,450; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(8) COMPANY: FONDREN ADP, LIMITED dba Fondren Mobil; DOCKET NUMBER: 2009-0144-PST-E; IDENTIFIER: RN100527142; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$3,058; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 425-6010; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Gulf Coast Water Authority; DOCKET NUMBER: 2008-1887-SLG-E; IDENTIFIER: RN102678141; LOCATION: Galveston County; TYPE OF FACILITY: water treatment sludge land application site; RULE VIOLATED: 30 TAC §312.122(b) and TCEQ Water Treatment Plant Sludge Registration Number 730049, Special Provisions A, by failing to comply with the permitted water treatment plant sludge land application rate of 38 dry tons per acre per year; PENALTY: \$2,080; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Horizon Retail LLC dba MJ's All Season Food Store; DOCKET NUMBER: 2009-0138-PST-E; IDENTIFIER: RN104813092; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment and Stage II vapor space manifold and dynamic back pressure; PENALTY: \$5,196; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: HRH Investments, LP dba John T White Shell; DOCKET NUMBER: 2008-1802-PST-E; IDENTIFIER: RN101904407; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$2,411; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Leander Independent School District; DOCKET NUMBER: 2009-0023-EAQ-E; IDENTIFIER: RN102732377; LOCATION: Cedar Park, Williamson County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain a modification of a contributing zone plan; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(13) COMPANY: Ledezma Ready Mix, LLC; DOCKET NUMBER: 2009-0384-WQ-E; IDENTIFIER: RN103750865; LOCATION: Mason, Mason County; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: \$700; ENFORCEMENT

COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(14) COMPANY: City of Marshall; DOCKET NUMBER: 2008-1548-MLM-E; IDENTIFIER: RN105591150; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §111.201, by failing to prohibit the burning of MSW for the purpose of disposal; and 30 TAC §330.15(a)(1) and the Code, §26.121(a), by failing to prohibit the disposal of MSW without specific authorization from the commission and by failing to prevent the discharge of road oil/tack oil; PENALTY: \$5,500; ENFORCEMENT COORDINATOR: Michael Graham, (806) 796-7092; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: City of Mart; DOCKET NUMBER: 2008-1907-MWD-E; IDENTIFIER: RN102079274; LOCATION: Mart, McLennan County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10645001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limits for DO, BOD₅, TSS, and total chlorine; 30 TAC §305.125(17) and TPDES Permit Number 10645001, Sludge Provisions, by failing to submit the annual sludge report; and 30 TAC §305.125(4), TPDES Permit Number 10645001, Permit Conditions Number 2.d., and the Code, §26.121(a), by failing to prevent the discharge of sludge; PENALTY: \$18,375; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: ONEOK Hydrocarbon Southwest, LLC; DOCKET NUMBER: 2008-1407-AIR-E; IDENTIFIER: RN100209949; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: natural gas fractionation plant; RULE VIOLATED: 30 TAC §116.115(c), New Source Review Permit Number 3956B, SC Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; PENALTY: \$13,100; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Pilot Travel Centers LLC dba Pilot Travel Center 435; DOCKET NUMBER: 2009-0086-AIR-E; IDENTIFIER: RN103125605; LOCATION: Anthony, El Paso County; TYPE OF FACILITY: convenience store/truck stop terminal; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to comply with the minimum oxygen content of 2.7% by weight of gasoline; PENALTY: \$1,470; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 898-3838; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(18) COMPANY: Billy Mudd and Pleasure Point Homeowners Association, Inc. dba Pleasure Point Water Supply Corporation; DOCKET NUMBER: 2008-1850-PWS-E; IDENTIFIER: RN101281749; LOCATION: Zavalla, Angelina County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for total trihalomethanes; and 30 TAC §290.113(f)(5) and THSC, §341.0315(c), by failing to comply with the MCL for haloacetic acid; PENALTY: \$875; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(19) COMPANY: RACETRAC PETROLEUM, INC. dba Raceway 6774; DOCKET NUMBER: 2009-0157-PST-E; IDENTIFIER:

RN102222635; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §290.51(a)(3) and the Code, §5.702, by failing to pay outstanding water system fees and associated late fees; PENALTY: \$5,599; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: RESCAR, INC.; DOCKET NUMBER: 2009-0103-AIR-E; IDENTIFIER: RN100234681; LOCATION: Orange, Orange County; TYPE OF FACILITY: railcar repair and painting; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A) and (B), Federal Operating Permit Number O-1532, General Terms and Conditions, and THSC, §382.085(b), by failing to submit a semi-annual deviation report; PENALTY: \$3,050; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(21) COMPANY: Alfred Sapp; DOCKET NUMBER: 2009-0009-MSW-E; IDENTIFIER: RN105516959; LOCATION: Centerville, Leon County; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Ross Fife, (512) 239-2541; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: Shepherd Place Homes, Inc.; DOCKET NUMBER: 2009-0383-WQ-E; IDENTIFIER: RN105668933; LOCATION: Ellis County; TYPE OF FACILITY: home builder; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Sonterra Development LLC of Jarrell, Texas; DOCKET NUMBER: 2009-0036-MWD-E; IDENTIFIER: RN104474465; LOCATION: Williamson County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014569001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for ammonia nitrogen, carbonaceous biochemical oxygen demand, and TSS; 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number WQ0014569001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring reports; and 30 TAC §305.125(17) and TPDES Permit Number WQ0014569001, Monitoring and Reporting Requirements Number 1, by failing to submit effluent monitoring results at intervals specified in the permit; PENALTY: \$3,440; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(24) COMPANY: S.W.G., Limited Partnership dba Jonestown Liberty Mart; DOCKET NUMBER: 2009-0061-PST-E; IDENTIFIER: RN101492908; LOCATION: Jonestown, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide proper release detection for the piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a),

by failing to test the line leak detectors; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; and 30 TAC §334.51(a)(6) and the Code, §26.3475(c)(2), by failing to ensure that all spill and overflow prevention devices are maintained in good operating condition and are inspected and serviced as per manufacturers' specifications; PENALTY: \$7,419; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(25) COMPANY: Texas A&M University; DOCKET NUMBER: 2009-0142-IWD-E; IDENTIFIER: RN102182086; LOCATION: College Station, Brazos County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0004003000, Outfall Number 101, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limitations; PENALTY: \$4,340; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(26) COMPANY: Thomas Enterprises, Inc.; DOCKET NUMBER: 2008-1948-EAQ-E; IDENTIFIER: RN105618482; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: land development site; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer protection plan; PENALTY: \$750; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(27) COMPANY: Victron Stores, L.P. dba Tiger Mart 61; DOCKET NUMBER: 2009-0025-PST-E; IDENTIFIER: RN105482251; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system (VRS); 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II VRS and each current employee received in-house Stage II vapor recovery training regarding the purpose and operation of the VRS; and 30 TAC §115.245(1) and THSC, §382.085(b), by failing to conduct initial compliance testing of the Stage II VRS; PENALTY: \$8,938; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Western Rim Investment Advisors, Inc.; DOCKET NUMBER: 2008-1775-WQ-E; IDENTIFIER: RN105110043; LOCATION: Smith County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §305.125(1) and TPDES Construction General Permit (CGP) Number TXR15DX85, Part III, Section F(8)(a), by failing to conduct inspections of sediment and erosion control measures identified in the storm water pollution prevention plan (SWP3); 30 TAC §305.125(1) and TPDES CGP Number TXR15DX85, Part III, Section F(8)(c), by failing to modify the SWP3; and 30 TAC §305.125(1), TPDES CGP Number TXR15DX85, Part III, Sections F(6)(a) and (d), and the Code, §26.121(a), by failing to maintain in effective operating condition all sediment controls and to remove sediment accumulations that escape the site; PENALTY: \$19,758; Supplemental Environmental Project offset amount of \$7,903 applied to Audubon Society - Tyler Habitat Improvement-Langley Island; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-200901274



Notice of District Petition

Notices issued March 25, 2009

TCEQ Internal Control No. 10072008-D01; The petition was signed by Mr. Wilford R. Cardon, Manager, of the Cardon Group, L.L.C., an Arizona limited liability company on behalf of Boa Sorte limited partnership, an Arizona limited partnership, Charlesview, LLC, an Arizona limited partnership, Texas Reunion, LLLP, an Arizona limited liability limited partnership, SPG-Stratford III, LLLP, an Arizona limited liability limited partnership, SPG-Wheatley, LLLP, an Arizona limited liability limited partnership, SPG-RW, LLLP, an Arizona limited liability limited partnership, SLPR, LLC, an Arizona limited liability company, SPG-Masterson, LLLP, an Arizona limited liability limited partnership, R.D. Hubbard, SPG-Woodard, LLLP, an Arizona limited liability limited partnership, Arizona Lemonade Springs, LLLP, an Arizona limited liability limited partnership (Petitioners) filed a petition for creation of Montgomery County Municipal Utility District No. 125 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the holder of title to a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 873.3064 acres located within Montgomery County, Texas; and (4) no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately \$85,600,000 for water, wastewater and drainage facilities, \$5,320,000 for recreational facilities, and \$12,575,000 for road facilities.

TCEQ Internal Control No. 02262009-D01; WYA THE RANCH AT MARY'S CREEK, Ltd. (Petitioner) filed a petition for creation of Morningstar Ranch Municipal Utility District No. 1 of Parker County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land, consisting of one tract, to be included in the proposed District; (2) there is one lien holder, Premier Bank, on the property to be included in the proposed District; (3) the proposed District will contain approximately 380.316 acres located in Parker County, Texas; and (4) the land within the proposed District is within the extraterritorial jurisdiction of the City of Fort Worth, Texas (City). According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately \$25,948,132.

TCEQ Internal Control No. 02262009-D02; WYA THE RANCH AT MARY'S CREEK, Ltd. (Petitioner) filed a petition for creation of Morningstar Ranch Municipal Utility District No. 2 of Parker County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of

the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land, consisting of two tracts, to be included in the proposed District; (2) there is one lien holder, Premier Bank, on the property to be included in the proposed District; (3) the proposed District will contain approximately 356.829 acres located in Parker County, Texas; and (4) the land within the proposed District is within the extraterritorial jurisdiction of the City of Fort Worth, Texas (City). According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately \$24,354,595.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200901289

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 1, 2009



Notice of Minor Amendment Radioactive Material License

Waste Control Specialists LLC, 1 mile north of S.H. 176 at NW9998 on State Line Road, Andrews, Texas, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment of Radioactive Material License No. R04971. Radioactive Material License

No. R04971 authorizes radioactive waste processing and storage. The amendment application requests an extension of the 545 days for storing 1,940 cubic feet of mixed hazardous low-level radioactive waste treated and packaged in B-25 steel boxes generated at the Safety Light Superfund Site in Pennsylvania, after which it must be transferred to an authorized recipient.

The TCEQ Executive Director has completed the technical review of the amendment request and prepared an amended draft license. The draft license extends the time for storing the 1,940 cubic feet of mixed hazardous low-level radioactive waste generated at the Safety Light Superfund Site until January 31, 2010.

The license amendment request, the Executive Director's technical summary, and amended draft license are available for viewing and copying at the TCEQ's central office in Austin, Texas and at the Andrews County Library located at 109 Northwest First Street in Andrews, Texas.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the application. A public meeting is not a contested case hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments.

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the minor amendment after consideration of all timely comments submitted on the application.

MAILING LIST. If you submit public comments, you will be added to the mailing list for this specific license to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and license number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below. All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at www.tceq.state.tx.us/about/comments.html within 10 days from the date this notice is published in the *Texas Register* which should be on or about April 10, 2009.

AGENCY CONTACTS AND INFORMATION. If you need more information about this license application or the licensing process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us.

Further information may also be obtained from Waste Control Specialists LLC at Three Lincoln Center, 5430 LBJ Freeway, Suite 1700, Dallas, TX 75240 or by contacting Mr. Tim Greene at (888) 789-2783.

TRD-200901286

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 1, 2009



Notice of Receipt of Application and Intent to Obtain a
Municipal Solid Waste Permit

Permit Number 1486B

APPLICATION. City of Beaumont, Clean Community Department, 4955 Lafin Road, Beaumont, Jefferson County, Texas 77705, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Type I Limited Scope Permit Amendment. The applicant is requesting to extend the hours of operation of the landfill to improve the service for the City of Beaumont's landfill customers. The facility is located at the interchange of Fannett Road and U.S. Route 69, south on Lafin Road, Beaumont, Jefferson County, Texas 77705. The TCEQ received the application on February 9, 2009. The permit application is available for viewing and copying at the City of Beaumont City Hall, City Clerk's Office, 801 Main Street, Beaumont, Jefferson County, Texas 77701.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at www.tceq.state.tx.us/about/comments.html. If you need more information about this permit application or the permitting process, please call TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about TCEQ can be found at our web site at www.tceq.state.tx.us. Further information may also be obtained from City of Beaumont, Clean Community Department at the address stated above or by calling Mr. Kevin D. Yard, P.E., BCEE Consultant, SCS Engineers at (817) 358-6105.

TRD-200901288

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 1, 2009



Notice of Water Quality Applications

The following notices were issued during the period of March 5, 2009 through March 26, 2009.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

ALUMAX MILL PRODUCTS INC which operates Alumax Mill Products plant, an aluminum coils manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0002742000, which authorizes the discharge of treated process wastewaters, utility wastewaters, hot mill coolant wastewater, reverse osmosis reject and backwash, and paint line after cooler water at a daily average flow not to exceed 152,000 gallons per day via Outfall 002. The facility is located approximately five miles west of the City of Texarkana, southwest of the intersection of U.S. Interstate Highway 30 and Farm Road 989 and adjacent to the northern limit of the Town of Nash, Bowie County, Texas.

CITY OF LEXINGTON has applied for a renewal of TPDES Permit No. WQ0010016001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located at 8043 Farm-to-Market Road 1624, approximately 0.5 mile west of the intersection of Farm-to-Market Road

1624 and State Highway Spur 123, west of the City of Lexington in Lee County, Texas.

CITY OF GOREE has applied for a renewal of TPDES Permit No. WQ0010102001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 55,000 gallons per day. The facility is located on the east side of U.S. Highway 277, approximately 1/2 mile east of the intersection of U.S. Highway 277 and State Highway 266 in Knox County, Texas.

CITY OF ROSCOE has applied for a new permit, Proposed Permit No. WQ0010263002, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 240,000 gallons per day via surface irrigation of 82 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located approximately 3/4 mile south of the intersection of Interstate Highway 20 and Cemetery Road in Nolan County, Texas.

THE CITY OF SMITHVILLE has applied for a renewal of TPDES Permit No. WQ0010286001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located at 265 Hill Road, southwest of the intersection of North Second Street and Royston Street (on the east side of Gazley Creek), in the City of Smithville in Bastrop County, Texas.

CITY OF SWEENEY has applied for a renewal of TPDES Permit No. WQ0010297001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 975,000 gallons per day. The facility is located at the north end of Avenue A, on the west bank of the San Bernard River, approximately two miles northeast of the City of Sweeny and approximately three miles southeast of the intersection of State Highway 35 and Farm-to Market Road 1459 in Brazoria County, Texas.

CITY OF NEW HOME has applied for a renewal of Permit No. WQ0010632001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day via surface irrigation of 35 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 0.25 mile northwest of the intersection of Farm-to-Market Road 1730 and State Highway 211 in Lynn County, Texas.

THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE has applied for a renewal of TPDES Permit No. WQ0010986001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located approximately 3,500 feet northwest of the intersection of State Highway 6 and U. S. Highway 90A in Fort Bend County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of Permit No. 11220-001, which authorizes the disposal of treated domestic wastewater at an annual average flow not to exceed 7,311 gallons per day via surface irrigation of 3 acres of public access pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located in Cleburne State Park, approximately 300 feet from the north shore of Cedar Lake in Cleburne State Park and approximately 7,500 feet north-northwest of the junction of Park Road 21 and Farm-to-Market Road 1434 in Johnson County, Texas.

SHERIDAN WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0013452001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located 1,400 feet east-

southeast of the intersection of U.S. Highway 90 Alternate and Farm-to-Market Road 2437 near the City of Sheridan in Colorado County, Texas.

BOILING INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. WQ0013710001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 11,217 gallons per day via subsurface drainfields with a minimum area of 44,867 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located north of the intersection of Derrick Street and Burning Stone Drive, approximately 2.0 miles east of Farm-to-Market Road 1301 and approximately 2.5 miles southeast of the City of Boling in Wharton County, Texas.

SHEFFIELD WATER SUPPLY CORPORATION has applied for a new permit, Proposed Permit No. WQ0014849001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 67,000 gallons per day via surface irrigation of 24 acres of non-public access grassland. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 54,000 gallons per day via surface irrigation of 24 acres of non-public access grassland. The facility was previously permitted under Permit No. 10916-001 which expired September 1, 2005. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located approximately 1/4 mile south of U.S. Highway 290 and 1/2 mile east of Farm-to-Market Road 349 in Pecos County, Texas.

CALUMET PENRECO LLC which operates the Calumet Penreco, LLC - Dickinson Plant, which produces purified mineral oils, lubricating oils, and sulfonated hydrocarbons, has applied for a renewal of TPDES Permit No. WQ0000377000, which authorizes the discharge of treated process wastewater, utility wastewater, and storm water at a daily average flow not to exceed 75,000 gallons per day via Outfall 001; and process area storm water on an intermittent and flow variable basis via Outfalls 002 and 003. The facility is located north of Dickinson Bayou, east of Galveston, Houston, and Henderson rail line, and approximately 1500 feet southeast of the intersection of Farm-to-Market Road 517 and Farm-to-Market Road 1226 in the City of Dickinson, Galveston County, Texas.

US SILICA COMPANY which operates the U.S. Silica - Kosse Plant, a kaolin clay mining and processing facility has applied for a renewal of TPDES Permit No. WQ0001176000, which authorizes the discharge of process generated water, area runoff, and water from mine area dewatering at a daily maximum discharge not to exceed 2,500,000 gallons per day via Outfalls 001, 002, 003, 004, 005. The total combined daily maximum flow from the five outfalls shall not exceed 4,000,000 gallons per day. The facility is located on the east side of Farm-to-Market Road 2749, approximately one mile north of the intersection of State Highway 7 and Farm-to-Market Road 2749, and approximately 7.5 miles north of the City of Kosse, Limestone County, Texas.

NRG TEXAS POWER LLC which operates the Limestone Steam Electric Generating Station, has applied for a renewal of TPDES Permit No. WQ0002430000, which authorizes the discharge of low volume wastewater, cooling tower blowdown, lignite pile runoff and bottom ash transport at a daily maximum flow not to exceed 2,304,000 gallons per day via Outfall 001; material handling area runoff, wash-down and bottom ash transport water, and low volume wastewater on an intermittent and flow variable basis via Outfall 002; bottom ash transport water, low volume wastewater, and storm water runoff at a daily maximum flow not to exceed 510,000 gallons per day via Outfall 003; bottom ash transport water, low volume wastewater, and storm water runoff at a daily maximum flow not to exceed 432,000 gallons per day via Outfall 004; low volume wastewater, metal cleaning waste,

bottom ash transport water, and utility wastewater at a daily maximum flow not to exceed 216,000 gallons per day via Outfall 005; treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day via Outfall 006; treated domestic wastewater at a daily average flow not to exceed 3,000 gallons per day via Outfall 007; and bottom ash transport water and low volume wastewater not to exceed a daily maximum flow of 72,000 gallons per day via Outfall 008. The facility is located adjacent to and west of Farm-to-Market Road 39, approximately 2.5 miles southeast of the City of Farrar, Limestone County, Texas.

SANDERSON FARMS INC (Production Division), which operates the Sanderson Farms Franklin Feed Mill and Truck Shop, has applied for a major amendment to TPDES Permit No. WQ00003847000 to authorize removal of Oil and Grease effluent limits and monitoring requirements; increase the daily average permitted flow from 29,000 gallons per day to 40,000 gallons per day, and daily maximum flow from 40,000 gallons per day to 80,000 gallons per day; report flow to evaporation pond as daily average instead of monthly average; and increase the discharge to evaporation pond from 857 gallons to 1,500 gallons. The current permit authorizes the discharge of boiler blowdown at a daily average flow not to exceed 29,000 gallons per day and daily maximum not to exceed 40,000 gallons per day; and the disposal of truck wash water at a daily average flow not to exceed 857 gallons per day via evaporation. The facility is located on U.S. Highway 79 approximately 3.2 miles northeast of the intersection of U.S. Highway 79 and State Road 1940 in the Community of New Baden, Robertson County, Texas.

CITY OF DILLEY has applied for a renewal of TPDES Permit No. WQ0010404003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located approximately 3,000 feet east along Crawford Road from the intersection of White Street and Houston Street in Frio County, Texas.

THE CITY OF LULING has applied for a renewal of TPDES Permit No. WQ0010582002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located approximately one-half (0.5) mile north of U. S. Highway 90 at a point one (1) mile east-northeast of U. S. Highway 90 and U. S. Highway 183 in Caldwell County, Texas.

BRAZOS INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0011719001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located approximately 1.0 mile southeast of the City of Wallis and approximately 1,000 feet south of State Highway 36 in Austin County, Texas.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE has applied for a renewal of TPDES Permit No. WQ0012458002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located approximately 1.5 miles southwest of the intersection of Farm-to-Market Road 2 and State Highway 6, approximately 1.0 mile southeast of the City of Courtney in Grimes County, Texas.

AQUA DEVELOPMENT INC has applied for a renewal of TPDES Permit No. WQ0014175001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day. The facility is located approximately 2.5 miles east of the intersection of Farm-to-Market Road 360 and State Highway 36 in Fort Bend County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT No. 418 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit 14476-001 to authorize the decrease

of interim II phase of the existing permit from a daily average flow not to exceed 800,000 gallons per day to 600,000 gallons per day, and the decrease of the final phase from an annual average flow not to exceed 2,000,000 gallons per day to 1,000,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day in the final phase.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200901287
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 1, 2009



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on March 26, 2009, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Patriot Car Wash, L.L.C.; SOAH Docket No. 582-09-0637; TCEQ Docket No. 2008-0235-WQ-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Patriot Car Wash, L.L.C. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-200901290
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 1, 2009



Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800 or (800) 325-8506.

Deadline: 8-Day Pre-election Report due October 27, 2008

Rosendo Carranco, Texas First PAC, 1519 Washington Street, Suite 200, Laredo, Texas 78042-4412

Jesus Contreras, Law Offices of Contreras & Munoz, P.C., 1110 South Closner Boulevard, Edinburg, Texas 78539-5662

Doris Fears, Senate District 13 PAC, 5134 Tavenor Lane, Houston, Texas 77048-2646

Rogelio Martinez, Hidalgo County Republican Party (CEC), 1305 Fullerton Avenue, McAllen, Texas 78504-5748

Nancy J. Moffat, 1414 Whispering Dell Court, Southlake, Texas 76092-4615

Daniel G. Rios, 4112 Hobbs Street, Edinburg, Texas 78539-7753

Brent Sheets, Career Colleges & Schools of Texas, P.O. Box 11539, Austin, Texas 78711-1539

Deadline: Semiannual Report due January 15, 2009 for Candidates and Officeholders

Fausto Sosa, 101 West Hillside Road, Suite 11C, Laredo, Texas 78041-3117

TRD-200901214
David Reisman
Executive Director
Texas Ethics Commission
Filed: March 26, 2009



Office of the Governor

Notice of Application and Priorities for the Recovery Act: Edward Byrne Memorial Justice Assistance Grant Program Federal Application

The Governor's Criminal Justice Division is preparing to submit its application for funds under the American Recovery and Reinvestment Act of 2009, Edward Byrne Memorial Justice Assistance Grant (JAG) Formula Program to the Department of Justice, Bureau of Justice Assistance. The JAG allocation to Texas is \$90,295,773. A minimum of \$56.3 million must be passed through to local units of government and non-profit agencies.

CJD proposed to use JAG funds to reduce crime and its effect on communities. Comments on the application or the priorities must be submitted in writing to Christopher Burnett at egrants@governor.state.tx.us or mailed to the Office of the Governor, Criminal Justice Division, P.O. Box 12428, Austin, Texas 78711. Comments must be received or postmarked no later than 30 days from the date of publication of this announcement in the *Texas Register*.

TRD-200901276
Kevin Green
Assistant General Counsel
Office of the Governor
Filed: March 31, 2009



Texas Health and Human Services Commission

Notice of Award of a Major Consulting Contract

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the award of contract 529-06-0425 RFQ 23 to **Health Management Associates, Inc.**, an entity with a principal place of business at 120 N. Washington Square, Suite 705, Lansing, Michigan 48933. The contractor will provide Consulting Services regarding identification of barriers to pediatric subspecialty consultations and referrals and enumerate new methods to address these identified barriers.

The total value of the contract with **Health Management Associates, Inc.** is \$110,755.00. The contract was executed on February 27, 2009 and will expire on June 15, 2009, unless extended or terminated sooner by the parties. Health Management Associates, Inc. will produce numerous documents and reports during the term of the contract, with the final reporting due by June 15, 2009.

TRD-200901275
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 31, 2009

Public Notice

The Texas Health and Human Services Commission (HHSC) intends to submit to the Centers for Medicare and Medicaid Services a request to renew the NorthSTAR 1915(b) waiver to the Texas State Plan for Medical Assistance under the authority of Title XIX of the Social Security Act. The current waiver is scheduled to expire September 30, 2009. The proposed effective date for the renewal is October 1, 2009.

NorthSTAR provides behavioral health services (mental health and substance abuse) to eligible individuals in the Dallas service delivery area. These services are provided in a managed care setting. Individuals enrolled in the NorthSTAR have access to coordinated mental health and substance abuse/chemical dependency services that exceed the traditional Medicaid service array. NorthSTAR serves seven counties in Texas: Collin, Dallas, Ellis, Hunt, Kaufman, Navarro and Rockwall.

NorthSTAR is administered through a contract with a behavioral health organization (BHO). The BHO contract includes outcome and performance measures specifically designed for behavioral health. The BHO is required to subcontract with a specialty provider network for the provision of a set of specialty treatment services and service coordination services for enrollees with serious mental illness and serious emotional disturbance. The BHO is also contractually required to maintain an adequate network of other behavioral health provider specialties, including: psychiatrists, psychologists, licensed therapists, substance abuse treatment facilities, and hospitals.

HHSC will request that the waiver renewal be approved for an additional two year period beginning October 1, 2009, and extending through September 30, 2011. This waiver maintains cost neutrality of service costs for federal fiscal years 2009 through 2011.

To obtain copies of the proposed waiver, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-600, Austin, Texas 78708-5200, by telephone at (512) 491-1152, by fax at (512) 491-1953, or by e-mail at christine.longoria@hhsc.state.tx.us.

TRD-200901217
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 27, 2009

Texas Department of Housing and Community Affairs

Notice of Public Hearing for the American Recovery and Reinvestment Act of 2009 for the Weatherization Assistance Program Plan

The Texas Department of Housing and Community Affairs (TDHCA) will hold a public hearing to receive comments on the draft American Recovery and Reinvestment Act (ARRA) - Funded Weatherization Assistance Program Plan. Texas anticipates receiving an allocation of \$326,975,732 from the ARRA Texas allocation formula grant award. Funding to subrecipients will be based on the total number of grant

allocation awards. The program will be administered through the current subrecipients and additional subrecipients based on competitive awards.

The public hearing will be held at 1:00 p.m. on Wednesday, April 22, 2009 in Room #170, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701. At the hearing, a representative from TDHCA will describe the ARRA-Funded Weatherization Assistance Program (WAP) and the proposed use of the funds.

Local officials and citizens are encouraged to participate in the hearing process. Written and oral comments received will be used to finalize the ARRA-Funded Weatherization Assistance Program Plan. Written comments from those who cannot attend the hearing in person may be provided by the close of business at 5:00 p.m. on April 22, 2009, to Ms. Lolly Caballero, Senior Planner, Energy Assistance Section, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711 or by electronic mail to Lolly.Caballero@tdhca.state.tx.us or by fax to (512) 475-3935. A copy of the proposed Draft Plan may be obtained after April 16, 2009, through TDHCA's web site, <http://www.tdhca.state.tx.us/ea/index.htm> or by calling Ms. Caballero at (512) 475-0471 or by writing to Ms. Caballero at the TDHCA address given above.

Individuals who require auxiliary aids or services for this meeting should contact Ms. Gina Esteves, ADA responsible employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Lolly Caballero, (512) 475-0471 at least three days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-200901282
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 1, 2009

Texas Department of Insurance

Company Licensing

Application to change the name of MBIA INSURANCE CORP. OF ILLINOIS to NATIONAL PUBLIC FINANCE GUARANTY CORPORATION, a foreign fire and casualty company. The home office is in Springfield, Illinois.

Application to change the name of UNITED HEALTHCARE INSURANCE COMPANY to UNITEDHEALTHCARE INSURANCE COMPANY, a foreign life company. The home office is in Hartford, Connecticut.

Application to change the name of TRINITY UNIVERSAL INSURANCE COMPANY OF KANSAS, INC. to AMTRUST INSURANCE COMPANY OF KANSAS, INC., a foreign fire and casualty company. The home office is in Topeka, Kansas.

Application to change the name of FARMERS AND MERCHANTS INSURANCE COMPANY to PRIDE NATIONAL INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Oklahoma City, Oklahoma.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Regis-*

ter publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200901280

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: April 1, 2009



Texas Department of Licensing and Regulation

Vacancy on Advisory Board on Cosmetology

The Texas Department of Licensing and Regulation (Department) announces a vacancy on the Advisory Board on Cosmetology established by Texas Occupations Code, Chapter 1602. The purpose of the Advisory Board on Cosmetology (Board) is to advise the Texas Commission of Licensing and Regulation (Commission) and the Department on: education and curricula for applicants; the content of examinations; proposed rules and standards on technical issues related to cosmetology; and other issues affecting cosmetology.

The Board is composed of five members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of one member who holds a license for a beauty shop that is part of a chain of beauty shops; one member who holds a license for a beauty shop that is not part of a chain of beauty shops; one member who holds a private beauty culture school license; and two members who each hold an operator license. Members serve staggered six-year terms, with the terms of one or two members expiring on the same date each odd-numbered year. This announcement is for the vacancy of a licensed operator.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, fax (512) 475-2874, or e-mail advisory.boards@license.state.tx.us. Applications may also be downloaded from the Department's website at: www.license.state.tx.us.

Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-200901216

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: March 26, 2009



Vacancy on Water Well Drillers Advisory Council

The Texas Department of Licensing and Regulation announces a vacancy on the Water Well Drillers Advisory Council established by the Texas Occupations Code, Chapter 1901. The pertinent rules may be found in 16 TAC §76.650. The purpose of the Water Well Drillers Advisory Council (Council) is to advise the Texas Commission of Licensing and Regulation (Commission) on the contents of the licensing examination, the evaluation and recommendation of standards for continuing education programs, and rules for adoption by the department relating to the regulation of drillers registered under this chapter.

The Council is composed of nine members appointed by the presiding officer of the Commission, with the approval of the Commission. The Council consists of six licensed drillers who are residents of this state. One driller shall be selected from the state at large and one of each of the remaining five drillers shall be selected from the Gulf Coast, Trans-Pecos, Central Texas, Northeast Texas, and the Panhandle-South

Plains areas. Three members must be representatives of the public. A person is not eligible for public membership if the person or the person's spouse is licensed by an occupational regulatory agency in the field of well drilling, or is employed by, participates in the management of, or has, other than as a consumer, a financial interest in a business entity or other organization related to the field of well drilling. Members serve staggered six-year terms expiring September 15. This announcement is for one position of a licensed driller representing the Central Texas area.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, fax (512) 475-2874 or e-mail advisory.boards@license.state.tx.us. Applications may also be downloaded from the Department's website at: www.license.state.tx.us.

Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-200901215

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: March 26, 2009



North Central Texas Council of Governments

Public Notice Announcement - American Recovery and Reinvestment Act Clean Vehicle and Infrastructure Funding Opportunities

This is a request by the North Central Texas Council of Governments (NCTCOG) for competitive grant applications related to funding available under the American Recovery and Reinvestment Act (ARRA).

The NCTCOG, in partnership with the Dallas-Fort Worth (DFW) Clean Cities Coalition, is pursuing funding from both the Department of Energy (DOE) and the Environmental Protection Agency (EPA) for projects that advance alternative fuel and advanced vehicle technologies, reduce diesel pollution, create and preserve jobs, and help contribute toward improved air quality in the DFW ozone nonattainment area. In order to maximize the benefits of available funds for the DFW area, NCTCOG will be coordinating competitive grant applications for a portion of these funds on behalf of the region. NCTCOG is seeking partnerships from both the public and private sectors for projects that fall into the following emphasis areas:

Electric Vehicles (all-electric, hybrid electric, plug-in hybrid, etc.) and Associated Infrastructure

Other Alternative Fuel Vehicles and Associated Infrastructure

Green Truck Stops

Diesel Emissions Reductions

NCTCOG requests that all partners submit the appropriate information and letters of commitment to our offices by April 24, 2009 for the EPA projects and May 22, 2009 for DOE projects.

Visit www.nctcog.org/aqfunding for more details. To request more information, contact ARRACleanVehicles@nctcog.org or call (817) 695-9268.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally As-

sisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that, in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200901281

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: April 1, 2009



Public Utility Commission of Texas

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 23, 2009, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of VersaLink Enterprises, LLC for a State-Issued Certificate of Franchise Authority, Project Number 36828 before the Public Utility Commission of Texas.

The requested CFA service area includes the Cities of Fannett, Hamshire, LaBelle, and Goodrich, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36828.

TRD-200901222

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 27, 2009



Notice of Application for Review of Amended Nuclear Decommissioning Trust Agreement

Notice is given to the public of a request by the City of San Antonio, acting by and through the City Public Service Board of Trustees for Public Utility Commission of Texas (commission) review of proposed amendments to the Master Trust Agreement for the 12% undivided interest in the South Texas Nuclear Project Units 1 and 2 that was purchased in 2005 from AEP Texas Central Company on March 25, 2009, pursuant to the Public Utility Regulatory Act, TEXAS UTILITY CODE ANNOTATED §§14.001, 14.002, 39.205 (Vernon 2007 & Supplement 2008) (PURA).

Docket Style and Number: Request of the San Antonio City Public Service Board for Review of Amended Nuclear Decommissioning Trust Agreement, Docket Number 36831.

The Application: The City of San Antonio, Texas, acting by and through the City Public Service Board of Trustees (CPS Energy) filed a request for Public Utility Commission of Texas review of the of the proposed amendments to the Master Trust Agreement for the

12% undivided interest in the South Texas Nuclear Project Units 1 and 2 that CPS Energy purchased in 2005 from AEP Texas Central Company.

CPS Energy seeks review of the amendments to the 12% Trust Agreement resulting from the Commission's Order in *Notice by the San Antonio City Public Service Board of Receipt of Updated Decommissioning Study and Filing Pursuant to Public Utility Commission of Texas Substantive Rule §25.303(f)(4)(A)*, Docket Number 35786, Order (November 20, 2008) providing for the creation of a new spent fuel management subaccount and a pre-shutdown decommissioning cost subaccount.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All correspondence should refer to Docket Number 36831.

TRD-200901223

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 27, 2009



Texas Department of Savings and Mortgage Lending

Notice of Application for Change of Control of a State Savings Bank

Notice is hereby given that on March 17, 2009, application was filed with the Savings and Mortgage Lending Commissioner of Texas for change of control of Pioneer Bank, SSB, Dripping Springs, Texas, by Whittington Hancock Hanks, Austin, Texas.

This application is filed pursuant to 7 TAC §§75.121 - 75.127 of the Rules and Regulations Applicable to Texas Savings Banks. These Rules are on file with the Secretary of State, Texas Register Division, or may be seen at the Department's offices in the Finance Commission Building, 2601 North Lamar, Suite 201, Austin, Texas 78705.

TRD-200901258

Douglas B. Foster

Commissioner

Texas Department of Savings and Mortgage Lending

Filed: March 30, 2009



South East Texas Regional Planning Commission

Request for Qualifications

Technical Assistance for CDBG Based Projects and Programs

Description:

The South East Texas Regional Planning Commission (SETRPC) will be administering CDBG Hurricane Ike Disaster funds for Hardin, Jefferson and Orange Counties. As such, SETRPC is seeking an individual who is qualified to provide technical assistance in the development of policies, procedures, and guidelines for its multifamily program in accordance with Federal and State CDBG regulations and requirements.

Consulting services will consist of the following tasks:

1. Consultant will provide ongoing technical services to the SETRPC on an as-needed basis. Technical services potentially may include site visits during the term of the contract.
2. Consultant will provide training to SETRPC staff and such other persons as required.

Minimum Qualifications:

1. Minimum ten years verifiable experience with the CDBG program
 - a. Shown on applicant's resume
2. Minimum five years verifiable experience in underwriting and/or development of multifamily projects, including low income housing tax credit developments
 - a. Shown on applicant's resume

Response Date:

Please respond by Close of Business, Tuesday, April 14, 2009.

Proposals will be reviewed based on Consultant Selection Criteria.

Respond To:

Mike Foster
SETRPC
2210 Eastex Freeway
Beaumont, TX 77703
(409) 899-8444 Ext. 7504
TRD-200901257
Mike Foster
Director, Community Development
South East Texas Regional Planning Commission
Filed: March 30, 2009



Request for Qualifications

Underwriter for CDBG Based Projects and Programs

Description:

The South East Texas Regional Planning Commission (SETRPC) will be administering CDBG Hurricane Ike Disaster funds for Hardin, Jefferson and Orange Counties. As such, SETRPC is seeking a qualified underwriter to provide underwriting for multifamily applicants in accordance with Federal and State CDBG regulations and requirements.

Reimbursement:

SETRPC will pay between \$800 and \$1,600 depending on deal requirements. Terms are 30 days net.

Minimum Qualifications:

1. Minimum ten years verifiable experience with the CDBG program
 - a. Shown on applicant's resume
2. Minimum five years verifiable experience in underwriting and/or development of multifamily projects, including low income housing tax credit developments
 - a. Shown on applicant's resume

Response Date:

Please respond by Close of Business, Tuesday, April 14, 2009

Respond To:

Mike Foster
SETRPC
2210 Eastex Freeway
Beaumont, TX 77703
(409) 899-8444 Ext. 7504
TRD-200901259
Mike Foster
Director, Community Development
South East Texas Regional Planning Commission
Filed: March 30, 2009



Texas Department of Transportation

Request for Proposals - Outside Counsel

The Texas Department of Transportation (department) issues this request for proposals (RFP) for the purpose of identifying qualified law firms interested in providing legal representation to the department and the Texas Transportation Commission (commission) on matters related to the innovative financing and development of transportation projects, including the use of public/private partnerships, and as more fully set out as follows. Selection of outside counsel will be made by the department's General Counsel. The Office of the Attorney General must approve the General Counsel's selection before outside counsel may be employed.

Description: The department is a state agency granted powers under Transportation Code, Chapter 227, to plan and construct a set of intermodal transportation facilities that will integrate highway, rail, and utility components. The department is authorized under Transportation Code, Chapter 223, to construct, maintain, repair, operate, extend, or expand toll projects on the state highway system. The department is also authorized under Transportation Code, Chapter 91, to acquire, finance, construct, operate, and maintain rail facilities. Transportation Code, Chapter 223, Subchapter E, and Transportation Code, §227.023, authorize the department to enter into comprehensive development agreements with private entities for the acquisition, financing, design, construction, maintenance, and/or operation of intermodal transportation facilities and department toll projects.

The department intends to engage outside counsel to advise and represent the agency in connection with the development of transportation projects (including, without limitation, highway, toll, transit, rail, intermodal, and other related transportation facilities), comprehensive development agreements, and other public/private partnerships. Outside counsel will provide advice to the department in these areas, including providing legal advice and support on the terms of comprehensive development agreements and drafting, negotiating, and administering comprehensive development agreements, as well as legal issues involved in using public/private partnerships for the development of transportation projects, including procurement processes and innovative financing options and the implementation and structuring thereof. Outside counsel shall review legislation when requested by the department, recommend legislative action where appropriate and assist with drafting of legislation at the state and federal level. The department invites responses to this RFP from qualified firms for the provision of legal services under the direction and supervision of the department's Office of General Counsel. Outside counsel engaged by the department must demonstrate competence and expertise in the foregoing areas. Extensive prior experience in providing legal services related to pub-

lic/private partnerships for the development of transportation projects and the innovative financing of those projects is required.

Responses: Responses to the RFP may be submitted by an individual law firm, attorney, or joint venture between two or more law firms and/or attorneys. Responses to the RFP should include at least the following information: (1) a description of the firm's qualifications for performing legal services in the matters described previously, the names, experience, education and expertise of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and other firm personnel who will be assigned to work on these matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of these legal services; (2) information relative to the capabilities, location(s), and resources of the firm's offices which might serve the department's requirements, including a summary of physical resources that would be assigned to the department, and an organizational chart indicating the relevant areas of responsibility of each attorney assigned to work on these matters; (3) fee information (either in the form of hourly rates for each attorney and paralegal who will be assigned to perform services in relation to these matters or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) an abstract of the firm's cost control procedures and how it charges for its services; (5) a comprehensive description of the procedures used by the firm to supervise the provision of legal services in a timely and cost effective manner; (6) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the department or to the State of Texas or any of its agencies); and (7) confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Attorney General of the State of Texas.

Note: The department is particularly concerned with issues pertaining to any conflict of interest. Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address such conflicts.

A copy of the standard outside counsel contract is available upon request. Certain terms of the contract may be negotiated by the parties, subject to approval by the Office of the Attorney General.

Format and Person to Contact: Two copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8-1/2 by 11 inch paper with all pages sequentially numbered and either stapled or bound together. It should be sent by mail or delivered in person, marked "Response to Request for Proposal," and addressed to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, contact Angie Parker, Associate General Counsel, at (512) 463-8630.

Deadline for Submission of Response: All proposals must be received by the Texas Department of Transportation at the previously stated address no later than 5:00 p.m. on May 11, 2009.

TRD-200901269

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: March 31, 2009



Request for Proposal - Private Consultant Services

The Texas Department of Transportation (department) announces a Request for Proposal (RFP) for private consultant services pursuant to

Government Code, Chapter 2254, Subchapter B. The term of the contract will be from project initiation to December 31, 2009. The department will administer the contract. The RFP will be released on April 10, 2009, and is contingent on the finding of necessity from the Governor's Office.

Purpose: The Texas Department of Transportation is seeking an independent, top-down study of the department to optimize performance, improve quality, promote the effective and efficient use of resources, and assist in the identification of future resource needs. The effort will involve review, analysis, and recommendations relative to the management and organizational structure of administration, divisions, districts, and offices of the department. Only the Texas Transportation Commission and the statutory duties of the executive director are not included in this review. Based on the recommendations of the Sunset Advisory Commission, the consultant will propose and document alternative solutions for and independent analysis of the department to optimize performance, improve quality, promote the effective and efficient use of resources, and assist in the identification of future resource needs.

Eligible Applicants: Eligible applicants include, but are not limited to, organizations that provide private consulting services.

Program Goal: The completion of a report which includes documentation of the review of the department's management and organizational structure, staffing levels, and business processes and recommendations for improvement.

Review and Award Criteria: Each application will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will not be reviewed. A team of reviewers from the department will evaluate the proposals as to the private consultant's competence, knowledge, and qualifications and as to the reasonableness of the proposed fee for the services. The criteria and review process are further described in the RFP.

Deadlines: The department must receive proposals prepared according to instructions in the RFP package on or before May 4, 2009 at 3:00 p.m.

To Obtain a Copy of the RFP: Requests for a copy of the RFP should be submitted to Janice Mullenix, 125 East 11th Street, Austin, Texas 78701-2483. Email: jmullen@dot.state.tx.us, telephone number (512) 374-5120 and Fax (512) 374-5121. Copies will also be available on the Electronic State Business Daily (ESBD) at (<http://esbd.cpa.state.tx.us/>).

TRD-200901279

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: April 1, 2009



Texas State University-San Marcos

Consultant Contract Award

Pursuant to the provisions of Texas Government Code, Chapter 2254, Texas State University-San Marcos publishes this notice of consultant contract award. The consultant proposal request was published in the January 16, 2009, issue of the *Texas Register* (34 TexReg 391). The selected consultant will provide consulting services related to establishing an effective Center for Research Commercialization.

The consultant selected for this project is Alameda Innovations, LLC, 5424-10 Sunol Boulevard, Suite 225, Pleasanton, California 94566. The maximum amount of this contract is \$190,000.

TRD-200901262
Robert C. Moerke
Director of Contract Compliance
Texas State University-San Marcos
Filed: March 31, 2009



How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited as follows: 33 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version

through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).